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JOHN and A. H. HALLAM MURRAY

*v.*

WALTER and Others



JOHN and A. H. HALLAM  
MURRAY v. WALTER  
and Others

PRINTED FOR PRIVATE CIRCULATION

LONDON

JOHN MURRAY, ALBEMARLE STREET, W.

1908

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HAZELL, WATSON AND VINEY, LTD.,  
LONDON AND AYLESBURY.

(11)

# JOHN and A. H. HALLAM MURRAY v. WALTER and Others

Mr. MONTAGUE LUSH, K.C., Mr. F. E. SMITH, K.C., M.P., and Mr. S. A. T. ROWLATT (instructed by Messrs. JOHNSONS, LONG & Co.) appeared on behalf of the Plaintiffs.

Sir EDWARD CARSON, K.C., M.P., Mr. J. ELDON BANKES, K.C., and Mr. EUSTACE HILLS (instructed by Messrs. SOAMES, EDWARDS & JONES) appeared on behalf of the Defendants.

## FIRST DAY

Mr. MONTAGUE LUSH: May it please your Lordship, Gentlemen of the Jury, I appear in this case with my learned friends, Mr. F. E. Smith and Mr. Rowlatt, for the Plaintiffs, and my friends, Sir Edward Carson, Mr. Bankes, and Mr. Eustace Hills appear for the Defendants. It is an action brought to recover damages for libel, as you have heard. The Plaintiffs who bring the action are the well-known firm of publishers, Messrs. John Murray, and the Defendants are the proprietors and publishers of "The Times." The libel which necessitates this action is, as I shall submit to you, and as I think you will be of opinion when you have heard it, a very serious and grave one. It is not only serious

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and grave because of the imputations and charges that it makes against the publishers, but also because of the very peculiar circumstances under which it was published, as to which I will say a few words to you later on. The subject-matter of the action is the publication of the book which attracted such wide attention and interest—the Letters of the late Queen Victoria. The book was published by Messrs. Murray last October, and it was in July 1903 that one of the editors, Mr. A. C. Benson (who, with Lord Esher, had been entrusted by His Majesty the King with the duty of collecting for publication the correspondence of the late Queen), approached Mr. John Murray, a gentleman who, I need not tell you, stands at the head in the front rank of his profession of publishers, with a view to seeing if Mr. Murray would co-operate in the publication of the letters of Queen Victoria. Without troubling you with the correspondence and the negotiations which passed between Mr. Benson, representing himself and Lord Esher on the one hand, and Mr. John Murray on the other hand, I will come at once to the agreement which was entered into, under which Mr. John Murray, or rather his firm, undertook, on the terms stated in the document, to publish this work.

The Agreement bears date August 22nd, 1903, and the parties to it are Mr. A. C. Benson and Viscount Esher of the one part, and John Murray of the other part. I am going to read it to you, because you will see later on it will be important that you should know the terms on which Mr. Murray undertook the publication.

“The publisher shall at his own risk, and expense, and with due diligence, produce and publish a work in two or more volumes as may hereafter be decided by the authors, at present intituled, ‘The Correspondence of Her Majesty Queen Victoria, from 1837 to 1861,’ by the above-named authors, and use his best endeavours to sell the same. The publisher shall bear the entire cost and risk of printing and publication, including such

maps and illustrations as may be agreed upon between him and the authors. Except only that in the event of the cost of corrections in proofs exceeding 50 per cent. of the cost of the composition, such excess shall be borne by the authors. The entire proceeds of sales shall in the first instance be devoted to the repayment of the cost of production ; if after meeting this liability they yield a surplus, all such surplus shall be treated as profit and be divided between authors and publisher in the proportion of two-thirds to the authors and one-third to the publisher. If the cost be never covered by the yield the publisher shall bear the loss. The cost shall be reckoned as the invoiced cost—provided, however, that this be never more than 5 per cent. over the net cost, the usual discount."

I might perhaps just explain that that means that the publisher would keep the trade discount allowed to the bookseller. But, on the other hand, of course that would come to about the right amount in the end, because the publisher has to pay a share of the profits very often, generally long before he receives his payment from the booksellers.

" It shall include only direct expenditure." This is important : " No charge shall be made for office expenses, rent, bad debts, insurance, travellers' expenses, or for the work of any employee of the publisher, except only in the case of his draughtsman's time on maps, plans, or diagrams, which shall be charged at £1 1s. a day. During the progress of the work the publisher shall pay the expenses of such amanuenses and other assistants as the authors may have occasion to employ, up to £250, and this amount shall be charged to the expenses of the production of the work. The proceeds of sale shall be accounted for as nearly as possible at the actual sums received by the publisher from the bookseller, after making all trade discounts and allowances—that is to say, on the assumption that the book be published at a net price, copies shall be reckoned five-sixths of the published price (25 copies as 24 if

more than 10s. 6d., or 13 copies as 12 if the published price be 10s. 6d. or less) less 10 per cent."

That five-sixths of the published price is the figure usually taken as a fair average, having regard to the different allowances made to the publisher; if a firm takes, for instance, an enormous quantity of books they get a better allowance, and this five-sixths is the price arrived at as a sort of average, so as to equalise the thing, and not leave the publisher at a disadvantage.

"The above terms shall not apply to special sales (*i.e.* quotations made for large numbers in special cases) or to 'remainder'"—that means, of course, what is left over of an edition—"Colonial or American sales, or to sales of plates or rights. These shall not be averaged, but shall all be made a particular note of and accounted for at exactly what each yields. Twelve free copies shall be presented to the authors, and they may purchase further copies at five-sixths of the published price. Accounts shall be made up to Midsummer, and rendered as soon as possible thereafter, and vouchers for all payments and receipts shall be open to the authors' inspection. As soon as the publisher is at liberty to do so, he shall enter into negotiations with some American firm of good repute with the view of having the book copyrighted and published in the United States on terms subject to the approval of the authors and under payment of a royalty by the said American firm on the advertised price of all copies sold. Such royalties shall be paid to the publisher, and he will hand over to the authors three-quarters of all sums received by him from this source. The copyright of the work shall remain the property of the authors, but the rights of publication shall remain vested in the publisher, so long as he faithfully acts up to this understanding. The rights of translation shall vest in the authors, and any sums received on this account shall be paid to them without deduction."

That was the arrangement made between these two gentlemen on the one hand and the publisher on the other.

Now I want to say a word or two about what was done when this matter came to be carried out and the work came to be published. I read to you, as I daresay you recollect, that the cost of corrections was to be allowed up to 50 per cent. If it was more, the authors were to bear it, but you will understand, of course, in a book of this great importance, it may be, and it did turn out, that a great many more corrections were necessary than was contemplated. As a matter of fact, the amount which the publisher allowed to be debited against him as against this arrangement instead of being 50 per cent. is five times as much, so that, of course, that would considerably reduce the ultimate profit to the authors and to the publisher. Again, with regard to the payments to be made to the amanuenses in Clause 5, although the sum of £250 was allowed in the agreement, as a matter of fact no less than £900 was paid in the end, and debited against this arrangement; the larger figures in each case therefore being a debit to the sums before profits were calculated. I do not know that I need call your attention to anything else except to point out that there were illustrations contemplated by the agreement, which, of course, involved considerable expense. Then with regard to the foreign books, the translation of the work, all the rights with regard to those vested in the authors, and the publisher took nothing, although, of course, Mr. Murray had to be, and was, very active in the interests of the book itself in negotiating with foreign firms with the view to translations and foreign publication.

Gentlemen, I did tell you there is a very important clause in the agreement, and that was to the effect that what is called in business establishment charges, which means, of course, all the expenses that you are under of paying your employees, and bad debts, and things of that sort, all had to be borne by the publisher—that is to say, the publisher was not allowed to say all the time the publication has been going on, “I am spending so many pounds towards the expenses of my

office; those ought to be allowed," and so on. He had to pay them all himself, which, of course, very largely reduced his interest, so far as profits were concerned, in the publication. That was the agreement under which the book was to be published, and the first edition was to be 10,000 copies. As a matter of fact, it slightly exceeded that number, because the ream does not work out exactly to an even number of copies, and the first edition was really 10,200 copies. Having regard to the time that was occupied in printing the work, and the long time, therefore, that would be occupied in reprinting it, it was thought prudent to order something like 2,000 more copies in addition to the 10,000, in order that when the first edition was exhausted people should not be kept waiting if they wanted copies of the work. That was the arrangement, and Messrs. Murray proceeded with their work. The authors, on the other hand, proceeded with theirs. Of course Mr. Murray in a work of this kind, in the peculiar circumstances in which it was being published, was very careful to refer everything to the authors, not taking upon himself the responsibility that in an ordinary work of less importance he might have taken. Now, as we approach the time of publication, which was, as I have told you, in October of last year, I must say a word to you with regard to an unfortunate dispute—of course the existence of which is known to you all—which had arisen between "The Times" on the one hand, and the publishers as a body on the other, which resulted in what is known as "'The Times' Book Club War." I may tell you—I do not suppose my learned friends will differ from me—that the rights and wrongs of that dispute have nothing on earth to do with the present litigation. This action is not brought, I need not say, in order that Mr. Murray may ventilate any grievance of his on that score. I do not suppose "The Times" will suggest that they can make any use of it to ventilate any grievance of their own. I say that, because I understand they

have scheduled to what is called in these actions their affidavit of documents a very large quantity of literature that has passed in reference to the dispute between the publishers and themselves. What use my friends may make of it I do not know ; it is only necessary for me to tell you this, without in the least going into the rights or wrongs or the merits or demerits of their case—it is only necessary for me to give you in a very few words the outline of what had passed at the time "The Times" published the libel upon which this action is brought. I daresay you are not unfamiliar with a sort of rough outline of the dispute, and how the booksellers, having found that one or other might be underselling and allowing a heavier discount than the ordinary booksellers allowed, an arrangement was made between the Booksellers' Association and the publishers, under which this new system was introduced, in order to put a stop to competition, which was doing terrible harm to the booksellers. Under this new arrangement, which, I believe, was made at a time when Mr. John Murray was Chairman of the Publishers' Association, an almost universal arrangement was made between the booksellers on the one hand and the publishers on the other, under which the booksellers would be buying books which were published at a net price, and would be put upon terms to sell at the net price without discount, so as to equalise the trade, and not let one bookseller be preying, as it were, on his competitors. "The Times," some time after they had published the "Encyclopædia Britannica," themselves opened the Book Club, and apparently published in their prospectus with regard to it a statement which indicates that they intended to publish and deal with these books partly as a circulating library and partly as booksellers, without any profit, because they said in their prospectus : "No circulating library has ever been established with the deliberate idea of spending money instead of making money, and none has ever attempted to do what we undertake to do." "The Times" Book Club was

started, and without, as I say, going at all into the merits of any disputes that arose, it was found, as probably you all know, that "The Times" allowed those who joined their Club to buy what were practically new books at a very large reduction—books that never would be called second-hand books in the ordinary sense—books that had only been read by one or two readers, and which were as good as new. "The Times" began to sell these books soon after the books were published. Now, the booksellers had been in the habit of treating books as new for several months after they were published, and when this new difficulty arose a new arrangement was entered into between the booksellers and the publishers, under which the rule was laid down that the booksellers were not to offer for sale or sell any second-hand copy of such net books at less than the published price within six months after publication. That would give the book a time in which the people who wanted the book would buy it net, and the booksellers would be remunerated, the authors would be remunerated, and the publishers would be remunerated of course more advantageously than if new books were sold at once as "The Times" proposed. I am not in the least concerned to say whether they were right or wrong in the view they took. At all events "The Times" did not agree to this, or approve of it. It is sufficient for my purpose to say that after enduring a somewhat acrimonious correspondence, "The Times" published several articles, and published several letters, on the subject. There was, unfortunately, a clear and well-defined dispute between the publishers and "The Times": "The Times" would not give way, would not give up their claim to sell these practically new books within a week or two after the publication. The publishers said: We cannot give way, we have made this arrangement, and we will adhere to it. The result was that "The Times" took a strong view as to what they thought the wrong-doings of the publishers were, Messrs. Murray specially being

in the front rank of the profession; and those were the conditions under which we approach the time when the letters of Queen Victoria were published by Mr. Murray.

On October 14th, 1907, just two or three days before the publication, Mr. Moberly Bell, a gentleman, of course, occupying a very prominent and leading position in "The Times," writes the following letter to Mr. Murray. I am bound to trouble you with this before I read the libel, because it would be impossible for you to appreciate the point of the libel until I have given you an outline of the case which precedes it. "My dear Murray,—You may remember that in our original negotiations, two years and more ago, there was some talk of Queen Victoria's letters, and you said that with regard to this book you might be disposed to make very special terms. Are you still of the same mind? The book is, of course, of interest; but the price is such that it can only have an official and a circulating-library sale. We are willing to lose a little money on it if you care to meet us half way, and would take a very large number if you are disposed in this one case to deal with us direct. If not, we can do with the small number we have already arranged for; but for the sake of the late Queen we should like to give the book as good a send-off as possible.—Yours very truly, C. F. Moberly Bell." On the same day Mr. John Murray answers it: "My dear Moberly Bell,—Yours just received. Nothing would give me greater pleasure than to do business with you again, not only with regard to one book but all along the line. Can't you reconsider your decision as to the six months' limit for new books? If this were done I think I could answer for it that not only mine but all other doors would be opened. I cannot, however, make an exception. But let me remove from your mind any idea that the 'Queen's Letters' is a book which is only going to have an 'official and circulating-library sale.' The copies already sold preclude this idea, and personal

orders are pouring in every day from private purchasers, not borrowers."

Gentlemen, I should have perhaps told you before reading the letters that in 1903, when the facts became known that His Majesty the King desired these letters to be published, "The Times" in large type published this notice. This was September 28th, 1903 : "The Correspondence of Queen Victoria. His Majesty the King has commanded the publication of selections from the correspondence of Queen Victoria between the years 1837 and 1861. The work will be edited by Arthur Christopher Benson, M.A., and Viscount Esher, K.C.B., and will be published by John Murray." The importance of that is that "The Times" were aware, as I suppose everybody was aware, that the editors of the work were these two gentlemen, and that Mr. Murray was only the publisher. He writes this letter on October 14th, in which you observe—and this is very important—he states that he is willing to come in with "The Times" in the publication and sale of this book, which, of course, was an expensive book. I do not suppose "The Times" dreamt that it would not be. Mr. Moberly Bell is perfectly willing to come in and sell the book, expensive as it is; but he is asking for special terms from Mr. John Murray, and he said, "For the sake of the late Queen we would like to give the book as good a send-off as possible," and Mr. Murray's answer is that he cannot make an exception which would be false to his colleagues with whom he has made this arrangement, but he was anxious, if he could, as the letter says, to resume the old friendly relations which had once existed between his firm and "The Times." Unfortunately, "The Times" insisted upon what they thought their rights, and the thing fell through.

Now, Gentlemen, on October 16th, that is two days after that letter was written, the book was published. It states on the title page that the owner of the copyright was His Majesty the King. The next day there

is published in "The Times" a review of the book, and, Gentlemen, there is so much importance to my mind to be attached to a passage in this document that, although I hope it is not unreasonable to ask you to listen to it, I should like to read it all to you.

Mr. Justice DARLING : Do you say it states on the book that the copyright of the book is the property of the King ?

Mr. MONTAGUE LUSH : Yes.

Mr. Justice DARLING : The agreement in Clause 10 states that it is to be the property of the authors.

Mr. MONTAGUE LUSH : Yes. The agreement was made in 1903, but in 1907 the arrangement was not adhered to. I want to read this review, and I will hand up to your Lordship a copy. No action is brought on this review, but you will see the passage which I will call attention to when I come to it is, as we suggest, obviously an interpolation by somebody else in the middle of the review which deals with the book. By the way, there is a footnote which is of some importance.

Mr. Justice DARLING : You do not propose to read the whole of this review, do you ?

Mr. MONTAGUE LUSH : No ; but I want to read enough to give point to what I am going to dwell upon. It is a laudatory review ; it is written, of course one would assume, by a gentleman who would no doubt be selected as a gentleman of literary knowledge and skill, because he was going to review a work of the first importance. It is published, of course, as a Literary Supplement to "The Times." "There is probably no unwritten life in which the world takes so much interest as in that of Queen Victoria. The length of her reign, and its unbroken prosperity ; the unique position which her long experience finally gave her in the Courts of Europe ; the marriages of her descendants making her the grandmother of half the crowned heads in the world ; the active part she has known always to take in Europe's great affairs : all these unite to give foreign nations an interest in her career and personality which none

of her predecessors on the English throne have ever excited." Then it goes on, but it is not germane to the subject, and I will not read that portion. I come now to the second paragraph: "That is this book's great opportunity. All the world wants to know about the political actions of the Queen; all England wants to hear also about her private life, and all that throws light on that noble character to which her subjects owe a debt which they can never repay except with an affectionate pride and devotion which will never fail. No one will doubt, then, that the King has acted wisely as well as graciously in ordering the publication of some of Queen Victoria's correspondence, which will inevitably to some extent meet both these demands. And everybody will be grateful to His Majesty for the liberality with which he has placed these rich treasures of interest and information at the disposal of the world." I had better read it now because now comes the passage I want to deal with: "It has been done in no grudging spirit. The material is indeed so vast that the editors speak of it in their preface as 'probably the most extraordinary series of State documents in the world.' It appears that there are in the King's possession some five or six hundred bound volumes of papers dealing with the Queen's life up to the year 1861, which is the period covered by the present work. From this immense storehouse the editors have been allowed to give to the public three large volumes of letters, each of about 600 pages. Everybody will recognise that this is very liberal treatment. The documents published are, indeed, so abundant that there is seldom a week after the Queen's accession which does not yield its letter; and there is one week—that of the resignation of Lord Aberdeen—which provides between thirty and forty pages, mainly written by the Queen and the Prince. In this way we go with the Queen through the first twenty-four years of her reign, standing, as it were, at her side from day to day, and seeing with her eyes especially, but also with those of her corre-

spondents, every successive phase of all the great events of her life. And her life is, of course, mainly our life, the life of England. It is obviously impossible to exaggerate the interest and importance of such a collection as this from the historical point of view. The editors may be heartily congratulated on their successful accomplishment of a most laborious and responsible task. The plan of their work may be open to criticism, and something may be said against the too exclusively political character of the selection, but the actual contributions of the editors are all that can be desired." Now comes the passage which I am going to ask you to look at, suddenly interpolated, as I suggest it is, in the middle of a review of the work : " But a grave mistake has been committed in the method of publication. The book is one that will create very wide interest—in one form or another it will appeal to every reader in the Empire, and it is difficult to overestimate its educational value if it were accessible to the classes, who are apt to believe that wisdom lies only in a democracy. But the three volumes, which might, one would imagine, have been produced at 10s., and which at a reasonable figure would have sold by hundreds of thousands, are offered to a privileged few at £3 3s." You will find later on the most strange resemblance between this extraordinary estimate by a literary gentleman, who, one would have thought, would not have been in the habit of ascertaining the cost of publishing books—an extraordinary resemblance between this and a letter of Mr. Moberly Bell to "The Times," which I will call attention to later on. You will bear in mind this gentleman suddenly bears off from the subject to introduce his statement, "One would imagine the work could be produced at 10s." Then it goes on : " Furthermore, it is impossible not to feel some regret that the book has taken its shape. On whose advice it was decided to give the public, not a life of the Queen, but a mere selection from her papers, we do not know ; but it is difficult not to think the decision an unfortunate one.

Everybody, except the accurate people who read, mark, and digest the notices they find in the newspapers, has vaguely believed that Mr. Benson and Lord Esher were engaged on a Life of the Queen. It was known that the Royal letters and papers had been placed in their hands, and people certainly expected that the result would be something more than a volume of selections edited with notes. In these days, when everybody's life is written, it is natural that people should expect an official and authoritative account of a life of such universal and unique interest as that of Queen Victoria. In that expectation there is nothing merely inquisitive or impertinent. On the contrary, it is the inevitable result of the plain fact that a Sovereign is the most public of all public persons, and that no Sovereign's life and personality was ever followed with such loyal and affectionate attention as Queen Victoria's was from her accession to her death. One, at least, of the present editors has given proof of his qualifications for writing a great biography. Was it impossible to ask the biographer of Archbishop Benson to become the biographer of the great Queen under whom the Archbishop served ? No doubt the first task, laborious as it was, would almost appear light in comparison with the second. But the first was accomplished in the scanty leisure of an Eton Master, and gave proof of an unusual power of dealing rapidly with a large mass of material, as well as of handling high matters of Church and State with judgment and with effect."

Mr. Justice DARLING : Why are you reading this ?

Mr. MONTAGUE LUSH : I will pass over it.

Mr. Justice DARLING : There is nothing but a complaint that the book is the letters of Queen Victoria, not the life of Queen Victoria.

Mr. MONTAGUE LUSH : Quite so. I will pass on to the next paragraph : " We have frankly confessed that the book has its defects and disappointments ; but when all has been said, it is still, for the right reader, a book of intense and entralling interest. The right

reader is the lover of history and great affairs, and particularly the reader with the political bias who has felt the fascination of the eternal battle of Westminster. For him these letters give the most delightful, perhaps, of all sensations—second only to that of being himself one of the actors—the sensation of being always behind the scenes.” I do not know that I need trouble you with anything more, because I have told you, subject to what I have read, the review is extremely laudatory. I want now to go back to the sentence which I called your attention to about the 10s. You observe that the writer there speaks of the book as belonging to every reader in the Empire, and without wanting to be hypercritical, in the latter passage which I read it speaks of a particular class of persons being the readers to whom the book will appeal, namely, those who are the lovers of history and Court affairs, and particularly to readers with a political bias. Now if you turn back to the beginning, in the first page, I am going to call your attention to a footnote : “The publishers of this book decline to supply ‘The Times’ Book Club with copies on ordinary trade terms, and subscribers who would co-operate with ‘The Times’ to defeat the Publishers’ Trust may effectively do so by refraining from ordering the book, so far as possible, until it is included in ‘The Times’ Monthly Catalogue.” That is the good send-off that “The Times” would give out of their great affection for the great Queen.

Mr. Justice DARLING: I see they put the same note to another book on the next page—a book about the Matterhorn, and they put the same note to another book about the life of the salmon.

Mr. MONTAGUE LUSH: I daresay. I am not suggesting they did not.

Mr. ELDON BANKES: It is put to all the books in that supplement.

Mr. MONTAGUE LUSH: That was the review in “The Times,” and two days afterwards comes a letter, which is the libel upon which we are suing, of which also I

will hand you copies. I suppose you know, Gentlemen, as I suppose everybody knows, that when a gentleman of great distinction writes a letter to "The Times," "The Times" pay him the compliment of giving him large type; and here is a letter published in large type in "The Times," signed by a gentleman obviously of great position, who calls himself "Artifex," and he begins in this way—it is the letter to "The Times," written by "Artifex," whoever he may be.

Gentlemen, I am going to read this through to you without comment, and when I have read it I will come back and call your attention to special passages: "Your reviewer of 'The Letters of Queen Victoria' has observed that the three volumes could probably have been produced for 10s. and sold at a reasonable price, instead of being priced at £3 3s. net, and thus rendered inaccessible to all but a privileged few. His estimate of cost is a liberal one. In an edition of 10,000—and surely no one would think of a smaller circulation for a book of that unique character—the three volumes as they actually appear would not cost more than 9s. The contents cost Mr. Murray nothing, and if we assume that he has paid £1,000 to each of the two editors, that would mean an addition of 4s. per copy, making the cost price to him 13s. per copy. Now, if we allow him 25 per cent. upon an outlay which will be recouped in three months, possibly before he had paid his printer's bill, we find that he can sell the book to the trade at 16s. 3d. If we allow the trade 3s. 9d. for the not very arduous labour of conveying the book from Mr. Murray to the buyer, the total price to the buyer becomes £1 net. Mr. Murray charges £3 3s. net, so that, after every one concerned has had fair, if not liberal, business remuneration for his work, the book is loaded with 43s., for which there is no justification whatever. Let us see where this money goes. According to Mr. Murray's rules published in 'The Times' last spring, his price to the trade for a book at three guineas net works out at 45s. 4d. We will drop the 4d. for convenience. Mr. Murray

gets 45s. for what costs him 13s., a profit of 32s., or over 350 per cent. upon his outlay in three months, equalling 1,400 per cent. per annum. The trade gets 18s. for transferring the book from Mr. Murray to the purchaser. That luckless victim, in other words, pays to Mr. Murray five times, and to the bookseller twice, the cost of production, making seven times in all—7 by 9s. equals 63s. There is only one qualification to be made. If the bookseller subscribes for dozens of copies before publication—in other words, relieves Mr. Murray of all risk of the books not selling—he gets 5s. more of the plunder, and Mr. Murray 5s. less. But the result to the public is the same, because the book is net, and the bookseller may not forgo any of his profit of 23s. Now, Sir, these figures in any case spell simple extortion. More than two-thirds of the price charged for the book represents an arbitrary addition to the natural price of the book, which would be absolutely impossible if books were published under the ordinary competition conditions applying to other productions. But this is not an ordinary case at all. The literary contents of this book are not Mr. Murray's property, either by authorship or by purchase. They are in a very real sense the property of the nation ; and in a more technical sense they belong to the Sovereign as a regal heirloom. The career of Queen Victoria is a national asset, and every one of us, rich and poor, is directly interested in whatever can illustrate and make more generally known her strenuous devotion to duty, and her increasing solicitude for the welfare of her country. In days of too general revolt against discipline and self-restraint in every form, it is peculiarly desirable that her brilliant example of submission to discipline and of continual application to work done for others should be brought into every household in the land. Her letters are a part of the national archives of our time, and it is intolerable that a publisher entrusted with the task of making them accessible to the public should treat them as his personal property, should put upon them a surtax of 43s. over

and above all reasonable remuneration for all concerned, and should render them totally inaccessible to all but the wealthy and privileged few. I believe that I shall command the assent of all the thinking portion of the public when I say that in accepting this task Mr. Murray assumed a fiduciary position. Were he really imbued with the lofty and chivalrous sentiments which he has publicly professed, that aspect of the case would have presented itself to him very forcibly. He would have felt, too, that the credit and prestige of bringing out a book of this kind would be a reward which might well make him content with a relatively small pecuniary return. He would then have exerted himself to sell the book as cheaply as possible, and to make it accessible to the greatest possible number—and his reward would not have been wanting. Mr. Murray has seen things otherwise. He has exploited the great personality of Queen Victoria for his own ends, and coined the national interest in her doings for his own enrichment into 32 pieces of silver, to be precise. It is not certain that he will be very successful upon the lines he has chosen, though he can hardly be less successful than he deserves. The public are now aware of the methods formerly practised in obscurity. People who have waited so long for the letters of Queen Victoria will be disposed to wait a little longer for the cheap edition which, according to precedent, will follow upon the heels of the dear one. 'The Memoirs of Prince Hohenlohe' were brought out at 2*4s.* in 1906, and at 6*s.* in 1907. Captain Scott's 'Voyage of the *Discovery*' cost 4*2s.* net in the edition of 1905, and 10*s.* net in that of 1906. 'From Midshipman to Field-Marshal,' by Sir Evelyn Wood, cost the early buyer 25*s.* net in 1906, but more leisurely people could buy it for 7*s. 6d.* net in the edition of this year. The 'Life of Henry Irving' was published in 1906 at 25*s.* net; the same publisher this year offers the same matter for 6*s.* net. So the *hocus-pocus* goes on; there are plenty more examples. *Qui se trompe ici?* The public, at any rate, are no longer so easily deceived as they were,

and the tables may be turned even upon Mr. John Murray."

Let me beg your attention for a moment to the letter published by the unknown distinguished gentleman whose knowledge, of course, the readers of "The Times" would assume to be accurate. I do not know what "The Times" think is intended by the term "fair comment," which is the defence they raise; but to pick out one passage alone, what do you think of the language in which Mr. Murray is compared with the great traitor—30 pieces of silver?

Gentlemen, is this the temperate language of a gentleman fairly commenting, to compare Mr. Murray to the man whose black act of treachery will and can never be forgotten? The writer of this letter does not scruple to draw that parallel, and he finds it upon an absolute tissue of falsehoods. Let me call your attention to the falsehoods in this letter. You recollect that on the 14th October, three or four days only before this thing was written, we find "The Times" asking Mr. Murray to make special terms in which they can sell the book, and because they cannot get what they want—

Mr. ELDON BANKES: They can buy the book.

Mr. MONTAGUE LUSH: They have not got what they want; and this gentleman apparently, whoever he is, has the columns of "The Times" thrown open to him to make statements with regard to the cost of this book to which I want to direct your attention. I am going to prove to you that as a matter of fact—when you take into account what every publisher and every business man must take into account as a debit to set against his contract, namely, the cost which he is undergoing in paying his employees to do the work—that Mr. Murray's profit on this book was 2s. 3d.

Mr. Justice DARLING: Per copy?

Mr. MONTAGUE LUSH: Per copy, the whole three volumes. I think I am absolutely accurate; it is within a penny 2s. 3d. Let me remind you of what had been arranged in the agreement. They had provided so

much for corrections, £250 ; and I tell you that the cost came to four times that amount. I read to you from the agreement that the amount allowed for the amanuenses was £250, and that came to £900. I called your attention to the corrections. I do not give the figure for that ; although the contract provided for 50 per cent. they came to four times the amount. There were alterations to be taken into account, although there is no defence pleaded here that the writer of this statement was telling the truth—"The Times" do not venture to say in this action that what they wrote was true. I want to call your attention to the grave statements made by the writer of this letter before he comes to compare Mr. Murray to Judas Iscariot by the 30 pieces of silver.

Mr. Justice DARLING : Mr. Lush, I want to understand. You say the profit on the three volumes actually works out at 2s. 3d. ?

Mr. MONTAGUE LUSH : Yes.

Mr. Justice DARLING : Taking all these figures as given in the letter of "Artifex," does the profit on the same amount of books, three volumes, actually work out 32s. ?

Mr. MONTAGUE LUSH : So I understand.

Mr. Justice DARLING : He says 32 pieces of silver, to be precise. I have not pretended to do this sum. Do you mean if you do the sum as it is set out in the letter of "Artifex" that the profit on the three volumes is 32s. ?

Mr. MONTAGUE LUSH : I could not say if it is accurately worked out.

Mr. ELDON BANKES : Yes, it is. I think so.

Mr. MONTAGUE LUSH : Now let me call your attention to this express statement made recklessly, either with knowledge that it was untrue, or without the slightest care, which is the same thing as if he knew that it was not true. It is intolerable, he says, that a publisher entrusted with the task of making them accessible to the public should treat them as personal property. It was not entrusted. "The Times" knew that the editors of this book were the gentlemen to whom His Majesty had entrusted this responsibility, and Mr. Murray had no

more to do with the production or the selection—he had nothing to do with it except publication as a publisher. He talks in this particular paragraph of the plunder; he talks of the publisher as the luckless victim; he talks of Murray as an extortioner. He says his figures spell simple extortion, and, he says, the literary contents of the book are not Mr. Murray's property either by authorship or by purchase, and then this comes in the paragraph at the foot of my page. The paragraph begins: "I believe that I shall command the assent of all the thinking portion of the public when I say that in accepting this task Mr. Murray assumed a fiduciary position. Were he really imbued with the lofty and chivalrous sentiments which he has publicly professed, that aspect of the case would have presented itself to him very forcibly." That is in paragraph 5. In other words, he is asking the readers of this journal, with its tremendous prestige, tremendous influence, tremendous circulation, the journal which people who want this book will naturally look at, and turn to—the publishers of this letter, as well as the writer of it, were conveying to the public that when this book was first put upon the market, having first given us that phrase, Mr. Murray, who was an extortioner, had been professing to be imbued with lofty and chivalrous sentiments, and if he had them he could not have done what he did. Now, Gentlemen, I want to ask you this, Do you not think "The Times" might have been a little careful before they opened their columns to a letter like that? I do not know if it will surprise you when I tell you that "The Times" wrote that letter themselves. After some proceedings which have taken place in these courts we have been shown, as I was promised to be shown, the original document, and there appears on the back of it the name of Mr. Hooper, who himself is on the staff of "The Times." This letter, which "The Times" are sending out to the public as a letter of an independent man who in his opening sentence speaks of "Your reviewer saying so-and-so," is a man who is himself "The Times." Of course you will have

to consider whether you think that is creditable to the persons who work and manage this great newspaper, standing, I suppose, at the head of all the newspapers in the world, that they will use that large type, and speak of "Your Reviewer," intending the readers of it all over the kingdom and in the Colonies and elsewhere to suppose that it is the unbiassed and impartial and truthful statement of a man who by his experience knows the truth. They asked the public to believe that it is independent criticism when as we now know it is a letter coming from the angry newspaper which three or four days before had tried themselves to share in the plunder by wanting to sell the book if they could have bought it, and they turn round and in this letter they not only insult the gentleman who has done them no harm but are holding him up to public obloquy, and are doing an act which will not only wound his firm's reputation but will be, as you will hear it was, a most terrible obstacle in the way of selling the book. I will deal presently, Gentlemen, later on, with the extraordinary influence this publication has had on the publication of the book. You will hear how the sales fell, how travellers in vain tried to get rid of copies, and I shall ask you to say later on the very serious injury when you come to deal with the question of damages. But that is not all, because I now want to ask you to turn your mind back to the passage in the review upon which this critique was supposed to have been founded, because you did not know the object I had in asking your special attention to the sudden interpolation, in a review of a laudatory kind with regard to the book itself, of what the reviewer would know nothing about, namely, the cost of the work. You have read many reviews in the course of your life. Does it strike you as usual or unusual that you should find in the middle of a statement with regard to the merits of the work a sudden interpolation of the statement that it only costs 10s. to bring out? Now let us see what light can be thrown on that. I agree it is probably a matter upon which the argument may not be very

cogent. I have asked you to contrast the statement in that passage as to the readers of the book being practically everybody in the kingdom with the statement, which obviously was the real work of the reviewer, when he said it would appeal to the class of politicians and persons who were interested in the battle of life. But we find a little light thrown on this matter by a letter of which we have recently had inspection, written by Mr. Moberly Bell, who wrote to ask the publisher to let them buy books at special terms. That was on the 14th, and we have access to a letter which he wrote a week before to Lord Esher. I am going to read it to you, and it is dated October 7th : "Dear Lord Esher,—Will you forgive me for my writing to you privately on what I think is a matter of public interest ? The letters of Queen Victoria are to be published in three volumes at 21s. per volume, that is, at the price which is prohibitive for nine-tenths of the people who would otherwise buy them. A friend of mine went a day or two ago to the Army and Navy Stores and was told by their book manager that he was afraid to touch it. I, myself, went to another large book dealer, who said, 'We don't know what to do ; they are killing the book.' The cost of the production of the book—I mean, of course, the technical production, that is, paper, printing, and binding—cannot exceed 9s. for the three volumes, and at three times that cost, or 30s., the sale would be practically unlimited ; at 63s. it can only have a *succès d'estime*. I beg you to reconsider this."

Then I had better read Lord Esher's reply : "Dear Mr. Moberly Bell,—I appreciate to the full your point. The arrangement with Murray was made some years ago, and is beyond revision. As for the book itself, I do not think that under any circumstances it would be a popular success. The form as well as the substance of the book make this impossible, as you will recognise when you see it. I shall remember your kind suggestions for the future, as there will be additional volumes to follow."

I have a few words to say about Mr. Moberly Bell's

letter. First of all, it was written a week before the book was published, and therefore he knew, when he wrote the letter of the 14th asking to buy a great many copies of it, that the price was three guineas, and as long as "The Times" were able to buy it not a word of complaint about the price. On the 14th October he knew from this letter of the 7th that three guineas was the price, and this letter of the 7th shows that he was aware that the real gentlemen to whom to impute blame, if blame was to be imputed for the price, were the editors.

Sir EDWARD CARSON : Where do you find that ?

Mr. MONTAGUE LUSH : The letter shows it.

Sir EDWARD CARSON : That is your word.

Mr. MONTAGUE LUSH : If my friend will have a little patience. He knew that the persons to whom to appeal for a reduction of the price were the editors, because he says : "I am afraid it is too late ; but if not, I beg you, Lord Esher, to reconsider it," that is, the price at which the book is to be published ; and Lord Esher says in his answer : "I will consider it. I shall remember your suggestions for the future, as there will be additional volumes to follow." Yet in "Artifex's" letter the gentleman is loading Mr. Murray with obloquy, and is speaking of Mr. Murray as the extortioner who, for his own ends, has put up the price to three guineas for a book which does not cost more than one sovereign. How do they reconcile the statement in Mr. Moberly Bell's letter with the statement in "Artifex's" letter if from the 7th of October "The Times" knew that Lord Esher and Mr. Benson had a voice in the price ? How do they think it is fair to say in "Artifex's" letter that the extortioner, with his 30 pieces of silver, is Mr. Murray, who is loading the price, the letter says, with the extra sum, that he may make a profit for himself ? Those two facts are patent, as I submit to you, on the face of the document. But now comes the extraordinary fact, that a week before that review was published by "The Times" they have an estimate by Mr. Moberly Bell as to the cost of

production. It is put at 10s. in the review, and "Artifex" in his letter says 9s. is the right figure. I have no doubt that "The Times" will be willing to enlighten us presently as to who wrote that passage in that review; but I suggest, if it is not explained, it is manifest that the 9s. in the letter of the 7th, published at a round figure of 10s., was not a mere coincidence that two independent people have both hit upon this figure, which is as wrong as a figure can be. I will show you, as I said, that 9s. is a ridiculous figure. Is it a mere coincidence that the man who wrote 10s. has made the same mistake? I suggest to you that unless "The Times" can explain it away the inference to draw from this review is that the whole thing was done in this way. The review is published with a footnote warning people not to buy, because a cheap edition must come out. The review of the reviewer is added to by a strange interpolation in the middle as to the cost of production, and then follows the attack on Mr. Murray in the letter which speaks of "your reviewer" doing this, and "we are now going to show that this estimate of 10s. is too liberal. It ought to be 9s." When that was published Mr. Murray was not going to sit down under it, and Mr. Murray instructed his solicitors to write a letter, and a letter was written on the 24th October by the gentlemen who instruct me, Messrs. Johnson and Long, to "The Times."

"Our client, Mr. John Murray, has instructed us to communicate with you with reference to the libellous statements contained in a letter signed 'Artifex,' and published in your issue of the 19th instant relative to the 'Letters of Queen Victoria.' This letter contains certain allegations as to the conditions on which the work was published by Mr. Murray, and the profits to be derived by him from the sale of it. These statements are absolutely false. The work is not Mr. Murray's property, he has merely been employed as the publisher, bearing the cost of its production, which far exceeds the figures in the letter, and he will be re-

munerated by a fraction of the net profits." Of course it was much less than a third, because we had to debit the working expenses against it. "It must be obvious to you that this letter is calculated to inflict great injury on Mr. Murray. He is, however, desirous of avoiding legal proceedings, provided that the allegations against him are withdrawn and adequately apologised for. He requires that the enclosed form of apology shall forthwith appear in the most prominent type and position in 'The Times,' and that he shall be at liberty to make it public as he thinks fit. We have to beg you, either directly or through your solicitors, to let us have your immediate acceptance of these terms, in default of which we have no alternative but to issue a writ."

This is the enclosed apology: "In our issue of the 19th inst. we published a letter under this heading: 'Letters of Queen Victoria,' signed 'Artifex,' which contained various estimates of the cost of producing this work, and various statements as to the profit accruing from its publication, upon which estimates and statements the writer based sundry imputations against Mr. John Murray as the publisher of the work. We are satisfied that the statements contained in the letter are absolutely erroneous, and that the imputations on Mr. Murray's conduct are quite unjustifiable. We beg to express to Mr. Murray our sincere regret that we should have been induced to publish these misleading statements, and to give publicity to the imputations on his action, all of which statements and imputations are unreservedly withdrawn and apologised for, and in consideration of Mr. Murray refraining from enforcing his remedy at law against us in respect of the allegations contained in the letter in question we authorise him to publish this withdrawal and apology."

You observe it is made, as I submit, an apology that might easily be given. They had been told of the falsity of the statements; there is no claim for solicitors' costs or anything else, but my clients demanded in "The Times" itself a statement that the facts were

erroneous, and an expression of regret. Now I ask you to consider what course "The Times" took when they had that opportunity given them. Of course my clients were not aware of the receipt of the letter signed "Artifex." "Gentlemen,—We beg to acknowledge receipt of your letter of the 24th October, which we have forwarded to our solicitors, from whom you will no doubt hear to-morrow.—I am, gentlemen, yours faithfully, Moberly Bell."

Then, Sir, comes the letter from the solicitors to "The Times," dated October 25th: "Dear Sirs,—Your letter of yesterday's date addressed to the editor, proprietors, and publishers of 'The Times' has been handed to us as solicitors to that journal. Our clients instruct us to say they regret that if in publishing 'Artifex's' letter they have in any way done your client Mr. John Murray an injustice, and that in to-morrow's paper will appear a paragraph in which this expression of regret will be repeated. In giving publicity to the letter our clients considered they were merely publishing a further contribution on a subject which has given rise to considerable controversy in which Mr. Murray himself has taken part by writing letters to 'The Times' on the subject, which have been published. We need not say that if Mr. Murray wishes to write any further communication on the subject-matter of the controversy or with reference to 'Artifex's' publication will be given to it." So that they are stating that "The Times" in publishing the libel considered that they were merely publishing a further contribution on a subject which had given rise to considerable controversy. I do not know what that letter means, because "Artifex's" letter is not a controversy on the "Book War." It is an attack of a most venomous nature on Mr. Murray's integrity, and a misstatement of facts in order to lay the foundation for the charge. My clients wrote back: "Your letter of the 25th instant was duly received by and brought before our client Mr. John Murray. The notice which appeared in 'The Times' of the 26th instant not only

fails to comply with the requirements contained in our letter of the 24th instant addressed to 'The Times,' but is so inadequate and unsatisfactory that our client has instructed us to issue a writ forthwith." And they ask for acceptance of service of the writ.

Now, Gentlemen, let me read to you what "The Times" published. I should tell you perhaps that before they published this so-called apology there had been some letters, and one wonders now whether these letters were letters of intelligent correspondents, but there were letters taking up the matter which "The Times" had given expression to as to the cost of this book. The so-called apology runs as follows:

Sir EDWARD CARSON : It was not a letter.

Mr. MONTAGUE LUSH : No, not a letter. It is a notice headed "Letters of Queen Victoria." "In our columns of the 19th instant under this heading," etc. (reading down to the words) "our correspondent may have made." "Our correspondent may have made" ! They made it themselves. They know it is untrue. Instead of writing at once to say, as they should have done if they really meant to do what was right and honourable—instead of writing to say, as we asked them to do, that it is untrue, and we apologise for it, they merely say Mr. Murray says so and so, we willingly give publicity to this statement, and regret that the mis-statement or error of our correspondent should have been made. Then apparently "The Times," looking into the matter a little more closely, publish another letter from "Artifex"—I will not say from him, but signed "Artifex," on October 28th : "Sir,—I observe in your issue of to-day"—this is again an independent contributor according to the view the public will take of it—"that Mr. Murray takes exception to the accuracy of my statement about the 'Letters of Queen Victoria.' I regret very much if I have done Mr. Murray an injustice," etc. (Reading down to), "£246." I agree it does not much matter. It is only £100 ; but, Gentlemen, before you remove this document from before your eyes

I am bound to call your attention to this ingenuous action on the part of "The Times" newspaper. They publish a statement on the 26th, a meagre, grudging statement, no apology, no admission that the statements were untrue, but a mere statement that they had this statement of Mr. Murray, and they regretted any misstatement or error, and, mark this, within two days of their publishing that notice they reiterate the false statements, because they are "Artifex," and nobody else. In order to take away from this miserable so-called apology they have given us one day, they write two days afterwards and say it is true from beginning to end; because that is the meaning of the second letter of "Artifex," and by keeping up this sort of variety of large type correspondence they have allowed him to give expression to his views, disagreeing with what "The Times" had done two days before, and so this absurd thing is kept up to the end. They have made a mistake, and "The Times," under the name of "Artifex," are saying that there was no mistake, and it is all true. They are saying if the work is not Mr. Murray's property there is nothing that can offer the least indication of the fact. They knew on the 7th October that it was not, because they write to Lord Esher and ask him to reconsider it. Is that an ingenuous or disingenuous statement of theirs under the signature "Artifex"? The "Artifex" who wrote that second letter was not the man of "The Times" who wrote the first. They got another one of their staff to come and write the second letter, and this second letter was a tissue of misstatements. The gentleman who wrote it said: "I regret very much if I have done Mr. Murray an injustice." The second "Artifex," the second man on the staff of "The Times," has done no injustice to Mr. Murray, and another man comes forward to "The Times" to represent the second.

Mr. Justice DARLING: Who was the second "Artifex"?

Mr. MONTAGUE LUSH: Mr. Ross. So the thing goes on. I think I must conclude what it is necessary to say

in opening the case by reminding you that at the end of the libel "Artifex" calls attention to cheap editions which were likely to follow, and you can imagine the influence that would have on people intending to buy a work. He gives instances of an important book, for instance, the well-known "*Voyage of the Discovery*." He says it cost 42s. in the 1905 edition and 10s. in the 1906 one. It is a very odd thing that the gentleman who wrote this did not take the trouble even to ascertain. The cheap edition of the "*Voyage of the Discovery*" was not published until 1907, and to account for the falling off after, he speaks of the great diminution of price. I do not know whether the gentleman who wrote this letter had taken the trouble to ascertain, but what made the first edition so costly was the illustrations, which were nearly all omitted in the cheap edition, and it was not true that people who bought in 1907 got the same thing for 10s. He never took the trouble to inquire. Here is another. He says the "*Memoirs of Prince Hohenlohe*" were brought out at 24s. in 1906, and 6s. in 1907. He may be surprised to hear that there was no second edition at that price at all. That is a sort of leap in the dark, and I submit I have shown to you that the whole of the letter of "Artifex" first of all is founded upon absolutely false statements, secondly it pretends to be an independent letter when it is not, and thirdly, a malignant and venomous attack upon Mr. Murray on a matter in respect of which when I come to address you on the evidence hereafter I shall ask you to take it into your most serious consideration. I do not suppose, and I suppose you will agree, that any book that has been published in the last thirty or forty years can have attracted public attention more than what the reviewer calls attention to, the Queen's life. He calls attention to the devotion and affection of the people for her, which will never die; and it is manifest that the harm done by this goes beyond the limits that any one of you can say. I do not want to anticipate what I shall say with regard to the facts, but I will tell you this. You will hear

how that book sold plentifully before the letter. I told you that they ordered 2,000 more copies to be struck off on the first impression. You will hear the extraordinary difficulty that the publishers have had in selling copies since the libel. I do not want to say more ; you will hear it as a question of evidence, but I shall give you evidence which will, I submit, leave no doubt in your minds that that letter of "The Times" over the signature of "Artifex" has done its work, and done it well. Whether people are waiting for the cheap edition I know not, but you will know, and you will have estimates given you by gentlemen skilled in this business—and a most important business it is—estimates by which you will be led to infer, if you accept the evidence, that thousands of copies would have been sold. The sale of it has been stopped by what we call this iniquitous libel, having regard to the circumstances under which it was first published, the want of ingenuousness, the want of courtesy, the pretence that it was the correspondence of somebody who was unknown to "The Times," I do say, and I am bound to say, that I suggest to you that it is a stigma upon the way in which a great journal like "The Times" has been conducted by those responsible for this attack. Gentlemen, with the assistance of my friends we will call the evidence, and you will hear what explanation "The Times" have to give, if there is any, for the way in which they first libel a man, and then pretend that they have done nothing but comment fairly upon a matter of public interest.

May I add one word more ? I ought to tell your Lordship that we have taken proceedings to see the original manuscript of the review, as well as the libel. My learned friend Mr. Bankes, a few days ago, in the Court of Appeal, undertook that we should see it. It was handed to me. My learned friend has been looking at it, and I say our suspicion was perfectly well founded that the passage in the review about the 10s. was not in the review as sent to "The Times."

Sir EDWARD CARSON : There was another passage.

Mr. MONTAGUE LUSH : I ask somebody to show me where the 10s. was put in.

Mr. Justice DARLING : Have you got the piece with that paragraph ?

Mr. MONTAGUE LUSH : I have got the pieces which go in the review. Your Lordship observes the passage : "But a grave mistake has been made" comes after the word "desired."

Mr. Justice DARLING : Now let me see that.

Mr. MONTAGUE LUSH : In the manuscript after the word "desired" come these words : "They are indeed a very small proportion of the whole." That passage has been taken out, and the 10s. passage put in in its stead.

Mr. Justice DARLING : Let me see it, will you ?

Mr. MONTAGUE LUSH : I hope your Lordship will be able to follow it in that way. You see the word "desired" in the middle of the first page of the note handed up, and the full stop ?

Mr. Justice DARLING : Is it on page 7 or page 8 ?

Mr. MONTAGUE LUSH : The middle of page 7. Now, if your Lordship will turn to the print of the review you will see the words "All that can be desired" still precede what I call the 10s. interpolation.

Mr. Justice DARLING : The manuscript went on in this way : "They are indeed a very small proportion of the whole, consisting only of the three introductory chapters." That takes the place of these words : "They are confined to three introductory chapters." That was altered to : "They are indeed a very small proportion of the whole, consisting of the three introductory chapters of the Queen's early life."

Mr. MONTAGUE LUSH : That is all left out.

Mr. Justice DARLING : "The introduction to which preceded each section of the correspondence"—where does that come ?

Mr. MONTAGUE LUSH : That is all left out in order to make room for the substituted passage about the 10s. No doubt the place was ascertained, and I suppose "The

Times" have left out about as much as is represented by the interpolated passage.

Mr. ELDON BANKES: No; I do not think that is so.

Mr. Justice DARLING: The manuscript is not altered at all.

Mr. MONTAGUE LUSH: That is just it. The writer of the manuscript says nothing about 10s. being the cost of production.

Mr. Justice DARLING: No; but the interpolation does not appear in the manuscript.

Mr. MONTAGUE LUSH: Either in the typed thing for the compositor or otherwise. I suppose the proof is there? May I see the proof?

Mr. ELDON BANKES: It is inserted in the proof.

Mr. MONTAGUE LUSH: It is inserted in the proof, I am told. I suppose we shall hear by whom. I do not know, but, my Lord, the interpolation is in writing, the rest is in print, and it is put in at the place marked "A," I am told, which, I presume, is the place after the word "desired."

Mr. Justice DARLING: Then it takes the place of a piece of criticism?

Mr. MONTAGUE LUSH: Yes.

Mr. Justice DARLING: Of a literary criticism.

Mr. MONTAGUE LUSH: If I might hand to your Lordship the original letter of Mr. Moberly Bell and this interpolation I think your Lordship will see.

Mr. Justice DARLING: You mean that you are dealing with a question of handwriting?

Sir EDWARD CARSON: There is no question that Mr. Bell wrote that part.

Mr. MONTAGUE LUSH: I have got the shorthand note of what was said in the Court of Appeal.

Mr. Justice DARLING: Now you have said you want to know who wrote the literary criticism?

Sir EDWARD CARSON: He is in Mr. Murray's employment. He is an assistant.

Mr. MONTAGUE LUSH: Is my friend instructed to

say that? Because that may be added to the list of misstatements.

Mr. Justice DARLING: Sir Edward Carson may have said it out of his interest in literary affairs.

Mr. MONTAGUE LUSH: I think that is all, *amicus curiae*.

Mr. Justice DARLING: Here is a review of a literary character into which it is admitted Mr. Moberly Bell had put the paragraph about the 10s. price.

Mr. ELDON BANKES: Instead of something that the editor had put.

Mr. MONTAGUE LUSH: And then Mr. Hooper says our reviewer stated so and so.

Sir EDWARD CARSON: This is an observation about the price in the manuscript. Your Lordship will see that it says "Any one who wanted the thing as it was really," etc. etc. (Reads a passage down to the words "if he can afford to buy them.")

Mr. ELDON BANKES: It comes here.

Mr. Justice DARLING: Who wrote that?

Mr. ELDON BANKES: The reviewer had left space. You see it comes here in the original.

(Adjourned for a short time.)

Mr. Justice DARLING: Are you having a shorthand note?

Mr. F. E. SMITH: Yes.

Mr. Justice DARLING: Are you having a print?

Mr. F. E. SMITH: We will arrange to have a print.

Mr. Justice DARLING: As long as you will let me have a print I will not take down every word, I will only take down what I want for my own information.

Mr. MONTAGUE LUSH: Your Lordship will have it before the Court sits to-morrow.

Mr. JOHN MURRAY, sworn

Examined by Mr. F. E. SMITH

1. You are one of the Plaintiffs in this case, and you carry on business as a publisher, I think, at 50, Albemarle Street?—Yes.

2. You have, I think, carried on the business at the same premises for many years, as your father and grandfather did?—Yes. My great-grandfather, too, carried on the business.

3. I want to ask before we come to the terms of this libel, and without going into them in any detail, this is not the first of the articles in "The Times" lately which have dealt with your firm?—About my firm.

4. Yes, about your firm?—Yes.

5. I think those attacks commenced—

Mr. ELDON BANKES: If you want to put any article to the witness, do so. That is a different matter, but I am afraid you cannot summarise the articles.

Mr. F. E. SMITH: I am not proposing to do so.

6. Will you tell me this: Was there any attack of any kind on your firm until "The Times" Book War commenced?—On me?

7. Yes?—Not that I know of.

8. I want to ask you a question or two, and not more, about the Book War. Before the year 1900 what was the practice of publishers as to the prices at which they issued books to booksellers?—The terms of our dealing with them?

9. Yes?—It was this, that we advertised a book at a certain price—we gave considerable discounts to the booksellers without any limitations on the price at which they should sell those books to the public. Then they went on increasing their discounts with one another competitively until they came to us, the publishers, who had then formed ourselves into an association, to ask us if we could help them, because their business was

being ruined by competition amongst themselves. We failed to do anything until the booksellers amalgamated themselves also into a society which could act for the booksellers, we acting for the publishers, and then, after a good deal of negotiation, they asked us to carry out the practice of making books net, that is, advertising them at a fixed price at which they could be sold to the public—the fixed price was generally supposed to be less than in the previous case, so that the public should be as little a loser as possible, but that any bookseller's supply should be stopped if he sold at less than the advertised price.

10. I think that arrangement was made in the early part of the year 1900?—That is the time, January, when the net price came into force.

11. And since then, has that worked, so far as you can judge, with satisfaction to publishers and booksellers alike?—Yes; it has given great satisfaction.

12. Can you tell me about what is the date of the institution of "The Times" Book Club?—The private negotiations began in, I think it was, June 1905, and I think it was opened about October 1905.

13. Did you have communication with Mr. Moberly Bell with regard to the prices at which purchases of books were to be made by "The Times"?—I do not quite understand the question.

14. I mean, at the time "The Times" Book Club was being formed, did you have communications?—Yes, I did.

15. That was as to the terms on which books were to be supplied to "The Times"?—Certainly.

16. And I think an arrangement that was called the net book system was adopted in the case of "The Times" also at first?—I have been describing the net book system, and they signed the agreement not to sell books to the public at less than net prices. That was one of the first conditions of our entering into negotiation with them.

17. They fell into line with the arrangement, which

you have described as being applicable to the rest of the country ?—Yes.

18. What was the next step in the relations of yourself and the other publishers to "The Times" Book Club ?—There were constant negotiations, but the next difficulty was that we found that they were selling books as second-hand in a very clean condition at a time so soon after publication, that it seemed to us, and to the booksellers, injurious to the general interests of the book trade and the authors that it should be practised, and we asked them to hold back the sale of second-hand copies until six months after the book had been published.

19. There is an article, to which I think your attention was directed, on the 1st October 1906, in "The Times," to the following effect—

Mr. ELDON BANKES : Are you going to put it in ? I am afraid I cannot have this otherwise.

Mr. Justice DARLING : Is this to show malice, Mr. Smith ?

Mr. F. E. SMITH : No ; it is really that the Jury may appreciate the circumstances under which the libel came to be published. It was led up to by the disputes that arose out of the Book Club. I do not want to go into it in any detail.

Mr. Justice DARLING : What does it matter whether it is better or worse to publish a libel with good reason or without ?

Mr. F. E. SMITH : It is a question whether one could understand the circumstances. I am not going into it.

Mr. Justice DARLING : It seems to me that the question for the Jury is whether this thing is a libel, and whether, if so, it has done any harm.

Mr. F. E. SMITH : If your Lordship pleases.

Mr. Justice DARLING : I should think the Jury can understand it.

Mr. MONTAGUE LUSH : Of course, in an action for libel the Jury are not limited by any pecuniary harm that is done. That is an element, but not necessarily the whole.

Mr. Justice DARLING : Yes. I mean that is one of the questions.

Mr. MONTAGUE LUSH : Quite.

20. Mr. F. E. SMITH : I want to ask you about the circumstances under which you came to publish this book : how was it first introduced to your notice ?—Do you mean "The Queen's Letters" ?

21. Yes ?—By a letter from my friend, Mr. Arthur Benson. He wrote to me in 1903 and said : "I want to come and talk to you about a very important matter." I knew nothing whatever about it until he called upon me and told me about it.

22. That was, I think, in August 1903 ?—Yes, about that time. I could not swear to the month, but it was somewhere in the summer of 1903.

23. This is the first you heard of the proposal ?—The first I heard of it.

24. He came and saw you, and you had an interview ?—Yes.

25. I think you learnt then that he and Lord Esher had been entrusted with the duty of making a selection of the letters of the late Queen, and did he invite you to write to him informing him as to the cost of producing a suitable book of that kind ?—Yes.

26. And the terms upon which your firm would undertake to publish it ?—Yes.

27. After some correspondence, into which I think I need not go, was the agreement of the 22nd August 1903 entered into ?—Yes ; I had it printed on purpose.

28. That agreement has already been read, and I need not go through it again. You remember in Clause 2 of that agreement, there is this : "The publisher shall bear the entire cost and risk of printing and publication, including such maps and illustrations as may be agreed upon between him and the authors, except only that in the event of the cost of corrections in proof exceeding 50 per cent. of the cost of composition, such excess shall be borne by the authors" ?—Yes.

29. How did it turn out ?—I might explain that that

clause had been put in because, as everybody who is acquainted with books knows, the cost of corrections is an absolutely inseparable element in the production of a new book. No new book has ever yet been published without having authors' corrections in proofs. We found that in old days sometimes authors went to excessive lengths in making corrections which were not necessary ; they might have made them in their manuscripts, and therefore we had to put a limitation on the cost of correction that is charged to the book.

Mr. Justice DARLING : I notice about that agreement the ordinary clause—because that is a printed agreement—is that the author bears all corrections over 25 per cent.

Mr. F. E. SMITH : That is so.

Mr. Justice DARLING : But he makes a concession to these authors and puts 50 per cent. instead of 25 per cent.

Mr. F. E. SMITH : Yes, over and above that.

Mr. Justice DARLING : Over and above that.

30. Mr. F. E. SMITH : (to the Witness.) Will you proceed ?—We found that a liberal allowance to the authors was 25 per cent. of the composition, that is one-fourth of the sum which it cost to set up the whole type of the book, so we generally allow that free, and it is not often exceeded ; but in this case, as I was warned beforehand that the corrections would be rather exceptionally heavy, the authors asked me if I would make the further allowance. Very well, I said, I would charge to the costs of the book at least half the cost of the composition. That is how the clause came to be put in.

31. How did it work out ?—It worked out that 50 per cent. of corrections was not nearly enough. The cost of corrections of altered and deleted matter, and so forth, amounted—I speak generally, I have not the figures before me just now—to two or three times the whole cost of composition. I never remember such a thing before.

32. Two or three times the whole cost of composition, and in your experience you say that that is unprecedented ?—I never remember such a case.

33. You can give the exact figures if you are asked about them ?—I can give the exact figures if required.

34. Who bore that extra expense ?—That was charged against the book, so that it came off the net profits of the book instead of being charged, as according to the agreement it would have been charged, against the editors. According to the agreement they would have had to pay everything over 50 per cent. out of their own pockets, but I allowed it to be charged against the book, and allowed myself to bear a share. I broke the agreement against myself.

35. In Clause 5 of that agreement there is this : “ During the progress of the work the publisher shall pay the expenses of such amanuenses and other assistants as the author may have occasion to employ, up to £250, and this amount shall be charged to the expenses of production of the work.” How did that work out ?—Mr. Benson came to me and said : “ There are an enormous number of documents at Windsor Castle which cannot be parted with, and therefore they must be copied. There will also be a great deal of translating work to be done ; therefore,” he said, “ I think I must ask you to make a special allowance in this case for the cost of amanuenses in carrying out this work.” I said : “ What do you think it would be ? ” As far as my recollection goes, he said : “ It might be about £250—a large sum.” I said : “ Never mind ; we will charge it against the book, as it is a special book.” From time to time we paid out these sums as the book was published, and as time went on, he kept on saying, “ The work of these amanuenses is much heavier than we expected ” ; and before the book was published we had paid £920 on that account. Again I broke the agreement against myself on that account, because none of us had foreseen what those expenses would be.

36. The book actually appeared, I think, on the 16th October 1907 ?—It did.

37. Did you receive a letter on the 14th October from Mr. Moberly Bell ?—I did.

38. Was it this letter ? " My dear Murray,—You may remember that in our original negotiations, two years or more ago, there was some talk of Queen Victoria's letters, and you said that with regard to this book you might be disposed to make very special terms. Are you still of the same mind ? The book is of course of interest, but the price is such that it can only have an official and circulating-library sale. We are willing to lose a little money on it if you care to meet us half way, and would take a very large number if you are disposed in this one case to deal with us direct. If not, we can do with the small number we have already arranged for ; but for the sake of the late Queen, we should like to give the book as good a send-off as possible." You got that letter on the 14th October ?—I received that letter.

39. Did you write back on the same date to Mr. Bell : " My dear Moberly Bell,—Yours just received. Nothing would give me greater pleasure than to do business with you again, not only with regard to one book, but all along the line. Can't you reconsider your decision as to the six months' limit for new books ? If this were done I think I could answer for it that not only mine but all other doors would be opened. I cannot, however, make an exception. But let me remove from your mind any idea that the 'Queen's Letters' is a book which is only going to have an 'official and circulating-library sale.' The copies already sold preclude this idea, and personal orders are pouring in every day from private purchasers, not borrowers " ?—I wrote that.

40. That is the letter that you wrote in reply ?—It is.

41. On the 17th October there appeared in "The Times" the review to which reference has already been made ?—In the Literary Supplement.

42. In the Literary Supplement of "The Times." As far as the literary criticism of the book is concerned, I think you made no complaint of any kind ?—I thought it a good article.

43. I will not ask you about that particular passage which has been discussed, because it is more a matter

for argument. Now, on the 19th October there appeared the letter in which the libel complained of is contained, and I want to ask you some questions about that. It says this : "Sir,—Your reviewer of 'The Letters of Queen Victoria' has observed that the three volumes could probably have been produced for 10s. and sold for a reasonable price"—that is in the passage which has been discussed in the review ?—Yes.

44. "Instead of being priced at £3 3s. net, and thus rendered inaccessible to all but a privileged few. His estimate of cost is a liberal one. In an edition of 10,000—and surely no one would think of a smaller circulation for a book of that unique character—the three volumes as they actually appear would not cost more than 9s." What do you say as to that ?—I say that that is nonsense.

45. I want you to tell us why ?—Because anybody knows who has had to do with the production of books that a book of that kind——I do not know if they have any copies here ?

46. Yes, let us have some copies ?—could not be produced, even to the extent of 10,000 copies, for 9s. a copy. I should like the Jury to have a copy of the book.

Mr. ELDON BANKES : We have a set here. (Books handed.)

Mr. Justice DARLING : What "The Times" suggest is that 3s. a volume would be proper.

Mr. F. E. SMITH : Yes.

Mr. Justice DARLING : 9s. for three volumes ?

The WITNESS : I call attention to the fact that in this volume there are 670 pages, and I think in some of the others there are even more. They are exceptionally big volumes. The type and paper and illustrations and the binding are all very good, and nobody could produce copies of that book for 9s. a copy, including all that is absolutely necessary to include in the production of the book.

Mr. F. E. SMITH : I will hand up to your Lordship, if

I may, a copy, because I want to ask a question about it. (Books handed to his Lordship.)

Mr. Justice DARLING : I think the Jury might perhaps just as well look at them. (Books handed to the Jury.)

47. Mr. F. E. SMITH : I have got the first volume in my hand, and I see in that volume there are 13 illustrations ?—Yes.

48. Is that about it ?—I think there are about 40 or 42 in the whole—somewhere about 40.

49. They are somewhat expensive in production ?—They are, and they are extra expensive for this reason, that the King gave instructions that we were to have a large number of pictures photographed. I went down to Windsor Castle once or twice myself with my brother, and we also went to Buckingham Palace, that we might select any pictures which we thought were suitable for the book. We then had to send very good photographers down to both places, who spent a considerable time at Windsor and at Buckingham Palace photographing them. Then these photographs were all stuck in an album and submitted to His Majesty for selection, so that there was a large number of extra photographs taken besides those which were used for the photogravures of the book : all the pictures are photogravures, which no doubt the gentlemen of the Jury know is a more expensive process of reproduction than what are called half-tone blocks, and therefore they are all done in as good a style as can be done, and by the best people we could get hold of, of course.

50. Just tell me about the binding and paper and so forth : are they of good quality ?—The binding and paper are all very good.

51. As to this statement as to the 9s. a volume, of course at that time the writer could not know about the extra sum spent on clerical and literary assistance and translations : can you tell me what that sum was ?—On extra expenses of these ?

52. Clerical and literary work. I think you have an

account there stated ?—We paid, as I think I named before, £920.

53. That is the amount. Of course that £920 had not been considered at all in this ?—There is one other item which perhaps I ought to mention to you, which is a very exceptional one. At the very outset I was told : “ Now these proofs will have to be read by various distinguished people for consideration, therefore you must have your proofs on an exceptionally good paper ; you must not have them on the ordinary rough paper on which proofs are ordinarily printed, but you must have them on the very best paper, with a very broad margin, and only one column on each page, so that comments may be made on them,” and I was also told I should have to set up a large amount of material that would not be required, so that these gentlemen might see comfortably what should be put in and what should be left out ; and I may tell you that one thousand pages had to be set up for this purpose, over and above what appears in the book, and then all that type was distributed again: over all this I had no control.

54. Were these conditions imposed by the editors ?—They took out certain letters of minor interest ; they said, “ If we put in all the material we have, the world itself would hardly contain the books.” Therefore they cut out the letters of least importance, and those letters which were cut out amounted to the equivalent of one thousand pages of this book. All that type was set up merely for the sake of being read, and was then distributed.

55. The statement in the libel is : “ In an edition of 10,000—and surely none would think of a smaller circulation for a book of that unique character.”—I think as a matter of fact 10,200 copies were first printed ?—Yes.

56. Will you tell me what was the cost, including advertisements, but excluding the payments to the editors per copy ?

Mr. ELDON BANKES : Is this taken from his books ?

57. Mr. F. E. SMITH : Yes ?—Excluding payments to the editors but including amanuenses ?

58. Yes ?—(Having referred.) It would be a little over £7,000.

59. Mr. Justice DARLING : What was it that cost a little over £7,000 ?—I will give you the items, composition and printing, that included corrections in proofs, paper, illustrations, binding, prospectuses, advertising, and paid to the editors for amanuenses, indexing, etc., £932 15s. ; that with the other amounts—of course I am making a rough calculation—I make the whole thing to be about £7,060 odd.

60. Mr. F. E. SMITH : That £7,060 was excluding any payment to the editors ?—No ; there is nothing paid to the editors.

61. Under your agreement, as we have seen, the editors were to get two-thirds of the profits ?—Yes.

62. If you add the editors' share of the profits down to the 21st November 1907 on to the cost, how does that cost work out per copy ?

Sir EDWARD CARSON : That is a part of the profits ; that is adding the profits to cost of production.

Mr. ELDON BANKES : They had better do it their own way.

Sir EDWARD CARSON : This is a departure from the Article now.

The WITNESS : It is rather difficult to work out these figures.

63. Mr. F. E. SMITH : Give me the total cost ?—The amount payable to the editors would be £5,392 odd. The total cost therefore would be £12,453 19s. 11d. Am I expected to work out what it would be per copy here in Court ?

64. No ?—That is what the total would be—£7,062 16s. 9d., the cost of production, which I have already mentioned to you, and £5,392 19s. 2d. profit earned up to that time by the editors, that is £12,453 15s. 11d.

65. Have you worked out how much profit you

yourself made per copy ?—It is a very difficult thing to say. Of course it is easy to say what my one-third share of profit is ; but then it is only a small proportion of that that goes into my pocket. I have tried very hard to get at this, and I hope these gentlemen, as men of business, will know that. I think the only way you can get at a figure of that sort is from your balance-sheet, taking what is year by year the cost of establishment expenses in proportion to the turnover of your business, and I find that that is  $16\frac{2}{3}$  per cent. I have inquired of other publishers, both here and in America, how it compares with theirs, and I find only one that was smaller ; that was a very large business indeed, and one American wrote and told me in answer to my question—

Mr. ELDON BANKES : No ; we cannot have this.

66. Mr. F. E. SMITH : Take it generally from your experience ?—My own accountant works it out at  $16\frac{2}{3}$  per cent. on the turnover.

Mr. ELDON BANKES : Is that the profit ?

Mr. Justice DARLING : No.

The WITNESS : If you work out the turnover of this book you will find that over £2,000 of my profits go to establishment expenses. I do not give this as an accurate figure, but I give it as the only way I know of in which I can approach such a figure.

67. Mr. Justice DARLING : I understand you say that over £2,000 out of your profits you estimate went to establishment expenses ?—I do, to establishment expenses—that is, to salaries, insurances, and various other items.

68. How much would that leave you for your profits ?—Roughly speaking, I make my share of profit to be £2,696 or thereabouts ; taking it at about £2,000 for establishment expenses, it would leave about possibly £600 or £700 to go into my pocket.

Mr. ELDON BANKES : On a sale of how many copies is that ?

69. Mr. F. E. SMITH : On a sale of how many copies do you say that is ?—On a sale of 10,000 copies.

70. As a matter of fact, how many have you sold?—The figures are in Court. We have not sold the 10,000 yet—it is between 9,000 and 10,000.

71. In those figures is any allowance made for interest on money advanced by you before publication?—Certainly not.

Mr. Justice DARLING: I do not understand that "The Times," or anybody else, would complain if Mr. Murray made £600 or £700 out of selling 10,000 copies. I do not see any reason for going into this in very great detail, because there is no justification pleaded.

Mr. F. E. SMITH: No.

A JUROR: I do not think the figures are correct, my Lord, either. If two-thirds come to £7,060, how is it that one-third does not come to £3,530?

Mr. Justice DARLING: Which figures are you taking—Mr. Murray's figures?

The JUROR: The witness has just told us that two-thirds comes to £2,060.

Mr. MONTAGUE LUSH: Those are the expenses.

The JUROR: No; their share, and his share comes to less than £3,000.

Mr. Justice DARLING: The cost to produce, he said, was £7,060.

The JUROR: Yes; I beg your pardon.

Mr. Justice DARLING: Excluding the payment to the editors; that is what he said.

Another JUROR: That is what I understood.

Mr. F. E. SMITH: On that you have got a figure there. Look at that figure of 2s. 3*1d.*, will you?

Mr. Justice DARLING: For what?

Mr. MONTAGUE LUSH: It is only to get his attention to the right page.

The WITNESS: I do not think I have that.

Mr. MONTAGUE LUSH: Yes, you have.

72. Mr. F. E. SMITH: What does that represent? How is that arrived at?—You want to know how the figure is arrived at?

73. Yes.—I take it as follows—

74. What does it represent first?

Sir EDWARD CARSON : What is he giving us?

75. Mr. F. E. SMITH : What does it represent?—That represents the 2s. 3d.

76. Sir EDWARD CARSON : What are you reading from?—Only some figures, a memorandum of my own. Am I not allowed to use those?

Sir EDWARD CARSON : I do not know what they are. I should like to know how the figures are made up.

77. Mr. F. E. SMITH : What are those figures that are on that paper that is in your hand?—How the 2s. 3d. is arrived at.

78. You have the paper behind your back now, but I want you to keep the paper before you. That paper contains some figures?—Yes.

79. Where were those figures taken from?—From my books.

80. I want you to tell me with reference to one of those figures—

Sir EDWARD CARSON : Does he say that 2s. 3½d. is contained in his books?

Mr. Justice DARLING : I do not know the figures he has got there. We have got to turn to the 2s. 3½d.

Mr. F. E. SMITH : We will go back at once.

81. You say that this sum of 2s. 3½d. is not contained in your books, though the other figures are. I want you to tell my Lord and the Jury how this figure of 2s. 3½d. is arrived at?—It is arrived at in the way I have been endeavouring to explain.

Sir EDWARD CARSON : What is it supposed to represent? It is impossible to follow it. He is asked, "How do you arrive at a figure called 2s. 3½d?" How is it made up, and what is the bearing of it?

Mr. F. E. SMITH : My friend is quite right.

82. Tell me what that figure is, to commence with, and we will discuss it afterwards. What does that represent?—It represents a rough estimate of what may possibly go into my pocket per copy, but that is introducing into the element of calculation that figure

which I have just told you I do not like to depend on too much, though I think it is a very fair general basis, that is, the establishment expenses.

83. It is what is left, on your reckoning, after debiting the establishment expenses?—The figure  $16\frac{2}{3}$  per cent. is arrived at on the figures of a whole year's trading, and I apply it to this book, as no other means of ascertaining the cost of establishment expenses in the case of any given book is available.

84. You put it forward as the best estimate you can? —The nearest I can get.

A JUROR : I would like to ask, Is that estimate on the basis of 10,000 copies?

Mr. Justice DARLING : Mr. Smith will ascertain.

85. Mr. F. E. SMITH : Is that calculation made on the hypothesis of a sale of 10,000 volumes?—10,000 copies.

86. It is 10,000?—Yes.

Sir EDWARD CARSON : Would you look at your book and verify that?

Mr. Justice DARLING : No; you can cross-examine about this when your time comes.

Sir EDWARD CARSON : I think he ought to show something as he goes along.

Mr. Justice DARLING : So he shall. You shall cross-examine him. We will get to the end of his examination on all this as quickly as possible.

87. Mr. F. E. SMITH : Now going on with the alleged libel, the next thing is: "In an edition of 10,000 the three volumes as they actually appear would not cost more than 9s. The contents cost Mr. Murray nothing"—what do you say about that?—It depends on what is meant by the word "contents." If the contents mean the type, paper, and illustrations, it did cost me something; if it means the materials from which the book was composed, they did cost me something, because I had to pay a share of the amanuenses and things of that sort; but I really do not know what they mean.

Mr. Justice DARLING : I suppose it means that nothing was paid like you pay for a work of fiction or history ?

Mr. F. E. SMITH : Nothing to the author, I suppose ?

88. Mr. Justice DARLING : No, for the ingenuity of composing, because they are letters—they are reprints of letters and copies of pictures, and in that sense it did not cost you anything, I suppose ?—Well, of course I have to pay the authors—I suppose if I am said to pay for the contents of the book, it is what I paid to the authors. In this case I did pay something to the authors, but it is a purely untechnical phrase, and I do not know what it means.

89. What did you pay to the authors ?—I do not know what it means.

90. Mr. F. E. SMITH : My Lord asked you what you paid to the authors ?—I agreed to pay them two-thirds of the profits.

91. And of course you have told us of the other things—the amanuenses' charges, and so forth ?—Yes.

92. But it is said here that the contents cost you nothing. You point out that you will pay the authors two-thirds of the profits ?—Yes.

93. Then the libel proceeds : “And if we assume that he has paid £1,000 to each of the two editors, that would mean an addition of 4s. a copy, making the cost price to him 13s. per copy.” We know the facts on that. “Now if we allow him 25 per cent. upon an outlay which will be recouped in three months, possibly before he has paid his printer's bill, we find that he could sell the book to the trade at 16s. 3d.” I am not sure that I know what is meant about the “printer's bill,” but in point of fact, what is your habit about your printers' bill ?—I pay them quarterly in cash as soon as the accounts are passed, invariably.

94. I think in this case payments on account were actually made to the printer and illustrator without any interest charged or discount allowed ?—Quite so.

95. “If we allow the trade 3s. 9d. for the not very arduous labour of conveying the book from Mr. Murray

to the buyer, the total price to the buyer becomes £1 net. Mr. Murray charges £3 3s. net, so that, after every one concerned has had fair, if not liberal, business remuneration for his work, the book is loaded with 43s., for which there is no justification whatever." You have dealt with those figures. What do you say about these figures?—Well, they are nonsense.

96. You have told us how the book is loaded?—In no respect do they correspond with the actual figures.

97. In no respect, you say, do they correspond with the real figures. It proceeds: "Let us see where this money goes. According to Mr. Murray's rules published in 'The Times' last spring, his price to the trade for a book at three guineas net works out at 45s. 4d." Had you published any rules in "The Times"?—Never. "The Times" published a document which I had given them in the course of a private transaction, a confidential document. It was a confidential document which passed into their hands in the course of a confidential transaction, and it was published without my knowledge or consent being asked or received. I had no objection to the public knowing it, but it was published without my consent.

98. As a matter of fact it was a private document?—Yes.

Mr. Justice DARLING: It says "Published in 'The Times';" and it is true that it was published in "The Times," but published without authority, he says.

99. Mr. F. E. SMITH: Yes; that is so?—That is so.

Sir EDWARD CARSON: You cannot bring an action for libel for that.

Mr. Justice DARLING: They have not, at all events.

100. Mr. F. E. SMITH: Then: "Mr. Murray gets 45s. for what costs him 13s., a profit of 32s., or over 350 per cent. upon his outlay in three months, equalling 1,400 per cent. per annum." Is that true?—No, it is very, very far from the truth.

Mr. Justice DARLING: It is fair to "The Times" to

say that that "350" is afterwards corrected into 246 per cent.

Mr. F. E. SMITH : One must observe the qualification with gratitude !

Mr. Justice DARLING : What effect that would have on the 1,400 per cent. per annum I do not know ; I am not an arithmetician.

Mr. F. E. SMITH : The accountant will deal with that.

101. "The trade gets 18s. for transferring the book from Mr. Murray to the purchaser. That luckless victim, in other words, pays to Mr. Murray five times, and to the bookseller twice, the cost of production, making seven times in all—seven multiplied by 9s. equals 63s." That is a curious sentence. Were you conscious of having any luckless victims ?—No, I was not.

Sir EDWARD CARSON : My Lord, is that a legal question as to what he was conscious of ?

102. Mr. F. E. SMITH : Had you any luckless victims ?—Not that I am aware of.

103. It comes to much the same thing. "There is only one qualification to be made. If the bookseller subscribes for dozens of copies before publication—in other words, relieves Mr. Murray of all risk of the books not selling—he gets 5s. more of the plunder, and Mr. Murray 5s. less." Were you plundering any one ?—That refers to a practice—

Mr. Justice DARLING : There is no justification, therefore it is irrelevant to ask whether he was plundering any one ; and whether this amounts to plunder or whether it does not, would be a question for the Jury and not for the Plaintiff.

Mr. F. E. SMITH : If your Lordship pleases. The only thing is there is a plea of fair comment here, and your Lordship recollects the facts commented on must be true.

Mr. Justice DARLING : The facts must, I know ; but that is a way of summing it all up—"So much more plunder."

Mr. F. E. SMITH : If your Lordship pleases.

104. "Now, Sir, these figures in any case spell simple extortion." After what your Lordship has said, I will not ask Mr. Murray what that means.

Mr. Justice DARLING : No.

Mr. F. E. SMITH : "More than two-thirds of the price charged for the book represents an arbitrary addition to the natural price of the book, which would be absolutely impossible if books were published under the ordinary competition conditions applying to other productions. But this is not an ordinary case at all. The literary contents of this book are not Mr. Murray's property either by authorship or by purchase." I do not know that I need read any more of that.

Mr. Justice DARLING : Do not you think you might begin again at the paragraph beginning "I believe that I shall command"?

105. Mr. F. E. SMITH : Yes. "I believe that I shall command the assent of all the thinking portion of the public when I say that in accepting this task Mr. Murray assumed a fiduciary position. Were he really imbued with the lofty and chivalrous sentiments which he has publicly professed, that aspect of the case would have presented itself to him very forcibly. He would have felt, too, that the credit and prestige of bringing out a book of this kind would be a reward which might well make him content with a relatively small pecuniary return. He would then have exerted himself to sell the book as cheaply as possible, and to make it accessible to the greatest possible number : and his reward would not have been wanting. Mr. Murray has seen things otherwise. He has exploited the great personality of Queen Victoria for his own ends, and coined the national interest in her doings for his own enrichment, into 32 pieces of silver, to be precise." Had you done so?—No.

Mr. Justice DARLING : "Coined the national interest in Queen Victoria's doings into 32 pieces of silver." You are asked if you had done that ; I do not know.

Mr. F. E. SMITH : "For his own enrichment."

Mr. Justice DARLING : He has not told you that. You asked him the question, but do you want to know whether he did or not ?

Mr. F. E. SMITH : He said " No." I do not know if your Lordship has a note of it.

Mr. Justice DARLING : I would have taken it down if he had said he had.

106. Mr. F. E. SMITH : " It is not certain that he will be very successful upon the lines he has chosen, though he can hardly be less successful than he deserves. The public are now aware of the methods formerly practised in obscurity. People who have waited so long for the ' Letters of Queen Victoria ' will be disposed to wait a little longer for the cheap edition which, according to precedent, will follow upon the heels of the dear one. ' The Memoirs of Prince Hohenlohe ' were brought out at 24s. in 1906, and at 6s. in 1907. Captain Scott's ' Voyage of the *Discovery*' —when was the 6s. edition of the " Memoirs of Prince Hohenlohe " brought out ?—I wrote and asked the publisher, and he wrote and told me—

Sir EDWARD CARSON : No, we cannot have this.

Mr. Justice DARLING : That will not do.

Sir EDWARD CARSON : None of these, your Lordship will see, have any reference to Mr. Murray's publication at all ; it is a general statement about books.

Mr. Justice DARLING : Yes ; at present it is enough to say he cannot tell us. I could cite you the authority. He cannot tell us what the American publisher said.

Mr. F. E. SMITH : The accuracy of these statements is of importance, and one must prove it in the proper way.

Mr. Justice DARLING : Mr. Lush has said that he will presently prove that in the case of Prince Hohenlohe's Memoirs and in the case of Captain Scott's " Voyage of the *Discovery*" the facts here are not truly stated.

Mr. MONTAGUE LUSH : That is right ; we will prove it later.

Sir EDWARD CARSON : What materiality has that ?

Mr. Justice DARLING : I do not know, but later on we may see. It may be that the writer of this had some suspicion of it because he winds up all these statements by saying, "*Qui se trompe ici ?*"

107. Mr. F. E. SMITH : I will just finish this. "So the hocus-pocus goes on ; there are plenty more examples. *Qui se trompe ici ?* The public, at any rate, are no longer so easily deceived as they were, and the tables may be turned even upon Mr. John Murray." I want to ask you a question or two as to the justification of this strong language. Have you seen "The Times" "Life of Queen Victoria" ?—Yes.

108. I think you have examined that ?—Yes.

109. It is in one volume, I think ?—Yes.

Mr. ELDON BANKES : Surely we cannot go into all this.

Mr. F. E. SMITH : What was the price of "The Times" Life ?

Sir EDWARD CARSON : I object.

Mr. Justice DARLING : Yes.

Sir EDWARD CARSON : Otherwise we shall have to get our books as to the 2s. 3d., and everything else.

Mr. MONTAGUE LUSH : If "The Times" undertake to say that the cost of the three volumes was 9s., and it is extortion to charge £3 3s., we surely may show what "The Times" did themselves with a book much less costly.

Mr. Justice DARLING : I do not think so, because it may be they are as bad as they say other people are.

Mr. MONTAGUE LUSH : I did not think in the case of "The Times" it was possible.

Mr. Justice DARLING : I do not know, judicially speaking, who Mr. Murray is or who "The Times" is : they are only figures of speech to me, and I must consider this as a logical proposition, and I say therefore that to show that they sold those at an exorbitant price would not prove anything as to whether this is a libel or as to whether it is not.

Mr. MONTAGUE LUSH : It would tend to show whether they could have *bondâ fide* called it an extortion.

Mr. Justice DARLING : No ; it would tend to show whether they were hypocrites or not—that is all ; but then that is a matter I have nothing to do with, neither have you.

Mr. MONTAGUE LUSH : It has some bearing on the damages. The Jury may take all these things into account in libel. I will not press it, if your Lordship does not think it reasonable.

Mr. Justice DARLING : What you are trying to do is to show that as tradespeople themselves they are not averse to making a large profit.

Mr. MONTAGUE LUSH : The more vindictive and the more untrue it is, the more the Jury may take it into account.

Mr. Justice DARLING : I have read somewhere that the pot may not call the kettle black, but it is not a proposition of law. If it is objected to, I think I must exclude the question.

110. Mr. F. E. SMITH : I think on the appearance of this letter you instructed your solicitors, and they communicated with "The Times" ?—Yes.

111. On the 26th October the notice appeared in "The Times," which has already been read ?—Yes.

112. I want to ask you as to the effect on the sale of your book, in your judgment, caused by the production of this letter of "Artifex."

Sir EDWARD CARSON : I object. You cannot ask a question like that. They may prove, if they can bring up anybody to prove it, that in consequence of this he was deterred, but he cannot give any opinion.

Mr. Justice DARLING : It is not quite the way to put the question, Mr. Smith.

113. Mr. F. E. SMITH : Tell my Lord and the Jury until the appearance of the first letter of "Artifex," what had been the number of sales of the book ?—I cannot give the exact number, but the sale had come fully up to my expectation : I thought it was very good.

114. I think you have some accounts here which will

give the exact number?—Yes; but my stockbook will be in Court if it is required.

115. Mr. MONTAGUE LUSH: It is in Court; you had better look at it?—(Book handed to the witness.) Here are the figures. I see that up to the 17th about 5,800 copies had been sold.

116. What date? Will you give the date of the month?—The 17th October 1907. Might I explain, my Lord, that this does not give an absolutely accurate account. This is a leaf from what I call my stockbook. The stockbook is a record of the copies which are brought down day by day from my warehouse for use in the office below for sending out. Therefore it is possible that one might have down 100 copies one day and 20 to 30 of them might remain downstairs for immediate use. Therefore I have no actual knowledge until my accounts are made up of the number of copies sold on any particular day. All I can do is to tell you on any given day the number of copies received from the binder or from my warehouse for immediate use. That is the object of the stockbook, which gives that record.

117. Mr. Justice DARLING: You would only get them in small quantities?—Downstairs where the business is transacted. It is like a dispense cellar, where you have a certain number of bottles out for immediate use and keep your large stock elsewhere. This represents the daily requisitions sent down from the larger supply for daily use.

118. By the 17th October what quantity had been sent down?—By the 17th October I see that 5,821 copies had been sent down.

Sir EDWARD CARSON: That is before the book was published.

Mr. MONTAGUE LUSH: I said a great many were sold before publication.

Sir EDWARD CARSON: It was not on the merit of the book.

119. Mr. Justice DARLING: They were copies sent

down for immediate use in the way of selling ?—Yes, my Lord.

A JUROR : May we take it that those were practically all sold ?

Mr. Justice DARLING : You will hear the witness cross-examined.

120. Mr. F. E. SMITH : How many copies were published ?—We then had 10,200 copies printed. The start had been so good, and knowing how long it would take to reprint a book of this kind, and that it would be a very disastrous thing for a popular book to be out of print, especially before Christmas, I thought I would take the risk of printing another 2,000 copies, because it was better to do that than run the risk of being out of copies.

121. What was the date of that ?—I think that was about the 22nd October.

122. Mr. Justice DARLING : About the 22nd October 2,000 more copies were printed ?—Yes, besides the 10,000 originally.

123. Mr. F. E. SMITH : You have had great experience in publishing. What is your usual experience as to the proportion of books that are ordered before publication to those which are sold afterwards ?—I think it is quite impossible to lay down any general rule. There are two classes of book—

124. Sir EDWARD CARSON : If you cannot lay down any general rule is it of any importance ?—May I explain the matter ?

125. Mr. Justice DARLING : I thought you said you could not lay down any general rule ?—Yes ; but I was going to explain in answer to the question. Sometimes a book is very much expected beforehand and proves a disappointment to the public, and there are other cases where nothing is expected of a book and the public suddenly finds out that it is a very valuable book. I might mention as an example the “Creevey Papers.” That book was not found out for some weeks after its publication, and therefore the success of that book

came later ; but as a general rule the sales go on from the time that the reviews appear, if the reviews are good ; and the reviews in this case were exceptionally good. I never remember so many and such good reviews of any book.

126. Mr. F. E. SMITH : After the libel appeared how did your sales develop then ?—It is difficult to answer. I think perhaps one of the best answers I can give is this, that whereas on the 17th we had sold 5,800 copies, I see by the end of the month we had only had down about 7,000, and by the end of November we had had about 8,200.

127. That was including the 5,800 ?—Yes. I mean the numbers which on the 17th October were 5,800 were at the end of October 7,000, and at the end of November were 8,200.

128. In your experience what are the best months after its publication for selling a book of this class ? When are you most likely to sell copies of it ?—It goes on steadily, and it ought to go on rather in an increasing than a decreasing ratio, especially when you remember that this is a book which is extremely well adapted for a good Christmas present ; and this book was published before the Christmas season, therefore we might look for a very large sale at Christmas time.

129. Did you ever get such a sale ?—No. It did increase at Christmas time, but not to the extent I might have expected. By the end of December I see the sales were 9,000, and then in January there was a very great dropping off. In the whole of January we had only about another 200 copies down.

130. How many copies have you unsold on your hands now ?—I had printed 12,225, and up to to-day I have had down 9,435.

131. I think the six months during which the booksellers are precluded from selling cheap has expired by now ?—Yes.

132. So that at this time you have these copies on your hands, and the librarians and booksellers can now

sell at any price they like ?—Messrs. W. H. Smith & Sons are offering copies second-hand, I believe. I have not seen one, but I believe that is so.

Sir EDWARD CARSON: My Lord, Mr. Bankes has undertaken to do the cross-examination for me, as I have not been well this morning.

Cross-examined by Mr. ELDON BANKES

133. You keep complete books of your business, do not you ?—I do.

134. In those books are recorded every copy of the book you have sold, and the price at which you sold it ?—Yes.

135. And all the expenses of your production ?—Certainly.

136. Have you asked any accountant to go through those books to see what the actual cost of production to you has been ?—No ; my accountant comes in once a year to audit the accounts. I have never called him in to audit a separate book.

137. Have you asked any accountant for the purpose of this trial to ascertain for you the actual cost of the production to you of this book ?—I have not.

138. Or the actual profit you have made ?—No.

Mr. MONTAGUE LUSH: There is no issue of truth pleaded. There is no plea of justification.

Mr. Justice DARLING: You do claim damages, and you have asked these questions.

Mr. MONTAGUE LUSH: Certainly.

Mr. Justice DARLING: If you had simply put in the libel and said I claim damages generally, then this cross-examination might be objectionable.

Mr. MONTAGUE LUSH: I am not objecting to the cross-examination except the suggestion that we ought to have had the accountant.

Mr. ELDON BANKES: Our case is that it is fair comment, and fair comment assumes that the facts are regularly stated with regard to cost, and so on.

Mr. MONTAGUE LUSH : You cannot assume your own facts. You cannot do it without a plea.

Mr. ELDON BANKES : Yes.

Mr. Justice DARLING : All I have to do now is to see whether Mr. Bankes' questions are out of order or not, and I do not think they are.

Mr. MONTAGUE LUSH : If your Lordship pleases.

Mr. ELDON BANKES : I have only asked two.

139. I must ask some questions about your books in a moment, but before that I want to ask you a few questions about the agreement. You have, have you not, published printed rules which you circulate or issue to the authors and to the trade ?—I have never published them.

140. "Published" is a wrong term. I withdraw it ?—I keep a printed form, which I call a memorandum of terms, and which I give to authors before I ask them to make any agreement, so that they may see on what basis the agreement is to be made.

141. That is a printed form ?—That is a printed form.

142. You have issued it to a great many authors ?—Yes.

143. And those terms of yours have been very widely discussed ?—Have they ?

144. Do not you know it ?—You know. I do not know.

145. You occupy a very responsible position ?—I am not aware of it ; but if you think so I accept your word for it.

146. This agreement which you entered into with these two editors is substantially, is it not, a reproduction of your rules ?—It is.

147. With, of course, the necessary modifications ?—Quite so.

148. In these rules of yours, and in this agreement, you define, do not you, what is the cost of production of a book ?—Yes.

149. It is a well understood term, is it not, "the cost of production." I mean in the publishing trade.

"Cost of production" is a well understood expression?—It is well understood, but it is a term which requires defining, because it is a term which in the hands of a fraudulent man might mean many things.

150. I understand that, but in the publishing trade the meaning is well understood?—It is generally well understood, but I do not know if you asked two publishers whether they would agree. I do not say they would not. It has no trade or technical definition "cost of production."

151. It is well understood in the trade what you mean by "cost of production" when you speak about it?—I find difficulty in answering that question. It never was put to me before. One might require one thing and one another. There is no technical trade definition.

152. May I read what you put in your agreement, which you tell me is a reproduction of your printed terms? You say in paragraph 2: "The publisher shall bear the entire cost and risk of printing and publication, including maps and illustrations as may be agreed upon between him and authors." That is the first point. Then you say that the entire proceeds of sale shall in the first instance be devoted to the repayment of the cost of production, and in the third paragraph you say what the cost of production is. May I read what you say about the cost of production? "The cost shall be reckoned as the invoice cost, provided, however, that this be never more than 5 per cent. over the net cost—the usual discount on settlement of the trade account. It shall include only a direct expenditure. No charge shall be made for office expenses, rent, bad debts, insurance, travellers' expenses, or for the work of any employee of the publisher, except only in the case of his draughtsman's time on maps, plans, or diagrams, which shall be charged at a guinea a day?"—I think that is a very good definition.

153. I quite agree with you, but you must not quarrel with us if we accept your definition?—No.

154. We are agreed at any rate as to what is meant

between you and us by "the cost of production." You notice here that you are entitled, as between yourself and the author, to retain the trade discounts not exceeding 5 per cent. ?—Yes.

155. But of course when you are estimating the actual profit you have made you would have to take that 5 per cent. into account ?—Yes.

156. You also notice, do not you, that as between you and the author you are entitled to charge 25 copies as 24 ?—Yes.

157. So that as between you and the author you are allowed one copy in every 24 ?—No ; because I give it to the bookseller.

158. You do not make him a present of it ?—Yes, I do ; of course I do.

159. We will see in a moment how that works out. But in arriving at your actual profit it may be necessary to take into consideration the fact that you are entitled to sell them 25 as 24 ?—How do you mean take it into consideration—in the profit ?

160. Yes ?—It occurs in so few cases that it is a very trifling item ; but you are quite right.

161. The third point is this. Of course when you produce a book of this kind there is a considerable amount of expenditure in what is known as plant ?—I do not deal in plant.

162. The plates, for instance ?—I do not know what you mean.

163. I mean plates that are prepared for the illustrations ?—The blocks and plates ?

164. Yes. They are available for any future edition ?—Yes.

165. Or they may be sold to a foreign or Colonial publisher ?—Yes, copies. We are not likely to part with the originals.

166. At any rate they are something that is valuable which remains in your custody and possession ?—Certainly.

167. I notice in your agreement there is a provision

as to that. "The above terms shall not apply to special sales—*i.e.* quotations made for large numbers in special cases, or to remainders, Colonial or American sales, or the sales of plates or rights"?—Yes.

168. So that the sale of plates is a matter which has to be taken into account?—Certainly.

169. And the sale of rights?—And the sale of rights.

170. I think that is all I need ask about the agreement. Now let me ask you a question or two about your books. You keep a number of books, do not you?—Yes.

171. I need not trouble about many of them, but amongst others you keep a town subscription list?—Yes.

172. That shows, does not it, the persons who have subscribed for books and the prices at which you have sold them to them?—Yes. It does not describe them. It puts down the names, but it does not necessarily put down all the prices. It gives the number that the people take.

173. And then you have to look into your ledger to see the price they have paid?—The book you describe gives the numbers bought by these different people.

174. And the special sales book gives the price?—These are special sales, which are accounted for as they occur. They are all carried out as they occur.

175. May I take it that of this edition which you published as many as 3,750 were subscribed for by five houses?—Very possibly.

176. I should like to have the numbers, because we have something to say about that. Will you check it if you would not mind? Did W. H. Smith subscribe for 1,250 copies?—Yes.

177. At £1 11s. 6d. a copy?—Yes.

178. Simpkin Marshall 1,000 copies at £1 17s. 6d. a copy?—Yes.

179. Mudie's 750 copies at £2. Is that so?—I believe that is so.

180. Boots 500 copies, at £2; and Hatchards 250 copies, at £2?—Those are correct. I have not the prices here, but I believe they are correct.

181. That shows that five subscribers took between them 3,750 copies?—Yes, I accept your addition, because I have not added them up.

182. May I take it that all those subscriptions were subscriptions which you received before the book was published?—Yes.

183. You also keep a presentation copy book, do not you?—Yes.

184. In that appears the number of the presentation copies. May I take it there were about 150 presentation copies?—I will accept the figure.

185. Correct me if I am wrong.

Sir EDWARD CARSON: Up to what date?

186. Mr. ELDON BANKES: The date that Mr. Murray has made his books up for us—the 25th March, I think it is. The two important books for my purposes are the production expenses book and the authors' ledger?—Yes.

187. In addition, of course, you have an authors' ledger?—What do you mean by the authors' ledger?

188. It is what you call the authors' ledger. It is the ledger in which the account is made up between you and the author?—I know what you mean. It is where the account of the book is kept.

189. But in addition to that you have your general ledger?—No; that is the general ledger.

190. Have you not a book in which your accounts are made up and in which your establishment expenses are inserted, and so on?—No.

191. Let me take the authors' ledger. I want first of all to ask you a few questions as to the result of your own figures and then to ask you how far you will agree that those figures ought to be adjusted. This ledger is a ledger which shows the total number printed?—Yes.

192. The total number sold, and the prices you received?—Yes.

193. And the shares of the profit?—Yes.

194. For the purposes of this action you have had it written up down to the 25th March?—Yes, as far as

possible. There may have been some little things. As a matter of fact I think some £100 further expenses have come in, but I do not want to insist upon those. It is very difficult to make up an account beforehand, because I had not all the accounts in; but this was as near as I could make it at the time.

195. This shows, does not it, that you had printed 10,200 copies?—Yes.

196. And that down to this date in March you have sold 9,165 copies?—7,482 and 1,683.

197. 9,165 copies?—Yes, that is right.

198. This account also shows that you have got 877 copies in hand of the original 10,000. I will show you how I get at that?—2,897.

199. 2,897, less 2,020?—That is right.

200. So that you have on hand 877?—Of the first edition.

201. I am only speaking of the first edition?—Yes.

202. So that we have got it that you sold 9,165, that you gave away as presentation copies 158, which would be the difference between the 877 left and the 1,035, which is the difference between 9,165 and 10,200. So that we start with 9,165 copies sold, 877 on hand, and 158 presentation copies?—Yes.

203. Now of course you have those 877 still to dispose of, and some, I suppose, have been disposed of since this date, the 25th March?—I cannot tell you the exact numbers that have been sold, but there have been a few copies sold since—not many.

204. Can you tell me whether you have sold those which you have sold at the trade price of £2 12s. 6d.?—The full trade price.

205. The full trade price?—No, I ought not to give that answer, because I cannot say. These things do not necessarily come under my personal supervision, as you may suppose. I leave that to others, and without seeing the books I cannot say.

206. Perhaps you would not mind letting us look. If you will let us see your book which shows the sales since

the 25th March, we can then find it out for ourselves?—Two copies were sold at two guineas.

207. What is the date of that? If we may look at the book we can adjust this account so as to make it up to date. (Book handed to Counsel.) This is the special sales book. I do not want that. I want the book showing all the sales?—I mentioned the special sales book. This is the only one there is.

208. You must have in your possession a book showing the record of your sales since the 25th March?—Yes; but it is in half a dozen, or a score of different books. Those are all posted up into a ledger, and that cannot be done every day, you know.

209. You are coming before the Jury to suggest to them that you only made 2s. 3d. profit?—Per copy.

210. You can only arrive at that by knowing what you have actually received for the copies you have actually sold?—The few copies that have been sold since that date will not affect the price per copy.

211. We will see. Perhaps you do not know as much about this as we do. The money you actually received for those 9,165 copies amounts to £18,971?—Yes, that is right.

212. Now, in order to get the profit on the whole edition I have to add to that the realisable price of the 877 copies in hand?—Have you?

213. Have not I?—No, you have not.

214. I think the Jury will think I have. In order to get at the profit which you are going to make out of this edition I have to add to the money you have already received the realisable value of the stock in hand. You may criticise this if you like, but I have taken the value of the 877 copies in hand as 41s. 5d., which is the average at which you sold the rest. That is £1,817, and if I add that to the £18,971 I get £20,788 as the amount realised or realisable for the 10,200 copies.

215. Mr. MONTAGUE LUSH: What do you say to that, Mr. Murray?—I have been a publisher for 35 years, and I have never heard of such a statement of account

before in my life. It is absolutely new to me that the book which "The Times" have assisted to make a dead remainder, and which may be left a dead stock on my hands, should be calculated out at the full price. It is the most preposterous thing I have ever heard.

216. Mr. ELDON BANKES: It seems to strike you as very amusing?—It is the first time I have ever heard of such a thing.

217. Of the 877 copies you have in fact sold some. You have sold nearly 200 of them?—200 of what?

218. Of the 877.—I do not know how many I have sold.

219. You laugh at my other suggestion that the 877 are not dead stock. I suggest to you the effect is that you have in fact sold a large proportion of them. Somebody in your business must be able to tell us how many you have sold?—No, I do not think anybody could tell you how many we sold on any given day. There may be some copies out on sale or return. You cannot tell on any given day exactly the number of copies sold. I have given you the number of copies had down from the warehouses, which is 9,435. You may assume that the greater part have either been sold or presented, but I cannot bind myself to a single copy, because some of these copies may be out on sale or return.

220. What is the figure you have got down to the present date?—9,435.

221. The figure you have given me as the number of copies sold is 9,165, so that we are getting on to nearly 300 of the remaining 877.

A JUROR: The 158 presentation copies are to be taken into account.

Mr. ELDON BANKES: No, I think I am right. You see there are 9,165 sold, 158 presentation copies, and 877 in stock, of those 877 some have since been sold, but only Mr. Murray can tell us how many. You may criticise my calculation in a moment, but if you will follow me you will see what I mean. Supposing we are justified in taking the 877 as worth 41s. 5d. per set,

then you would get, would you not, as the amount realised or realisable £20,788 for the edition?

Mr. MONTAGUE LUSH: Do you assent to that, Mr. Murray?

222. Mr. ELDON BANKES: You agree to that extent?—I am not a student of hypothetics. This is going so very deep into the science of hypothetics that I am listening to what you are saying, but I am not answering.

223. Will you tell me how far you agree? You agree that you sold 9,165 copies?—Yes.

224. You agree that for those 9,165 copies you have received £18,971?—Yes.

225. You agree that at this date in March you had 877 in hand?—Yes.

226. And you agree that of those 877 you have sold a number, but you are unable to give me the actual number?—That is so.

227. I must therefore put this to you by way of hypothesis. I must ask you to put a value upon the 877, bearing in mind that you have sold some proportion of them. I suggest to you that it would be not unfair to take 4*1s. 5d.*?—I cannot accept your suggestion, for I think it is exceedingly unfair.

228. Mr. Justice DARLING: Mr. Bankes asks you to put a value on those 877?—Yes, my Lord. I cannot do it, because the six months of what I called close time is now up, and second-hand books are in the market, and I may have these copies left on my hands for some time, and in the ordinary course of events they would be sold as a remainder, but I do not know what remainder price they would fetch if they had to be sold as a remainder, which I hope will not be the case, but it is quite possible that they will not fetch anything like that price.

229. Mr. ELDON BANKES: I understand you challenge the fairness of that hypothesis?—Entirely.

230. Can you put any estimate upon the value of those?—No. Supposing a book has to be sold as a remainder, which is a painful necessity which some-

times occurs, while I have complete control over a book I sometimes refuse to sell it as a remainder at all, because I do not like it to go on the market in that cheap form.

231. Can you tell me what you would sell them to "The Times" Book Club for?—I have not sold any to them.

232. What would you sell the 877 copies to "The Times" Book Club for?—I would not sell them to them at all.

233. Now let me come to the next point, because we cannot get any nearer to each other on that point. It is a fact, is it not, that if you take the debit side of this account the whole cost of the production of the 10,200 copies comes to £7,060 16s. 9d.?—Yes.

234. That includes the plant—

Mr. MONTAGUE LUSH: Did you ask him that?

Mr. ELDON BANKES: I will read out what it includes. It includes printing 10,000 copies, £1,344 12s. 2d.; stereotyping, corrections, etc., paper, £813 12s. 3d.; illustrations, £1,778 7s. 11d.; binding 10,000 copies, £1,742 10s.; ditto designs, £6 16s. 6d.; ditto blocks, £9 5s.; prospectus, order forms, etc., £174 6s. 3d.; carriage, cab fares, etc., £1 16s. 8d.; editors' amanuenses, £935 15s.; insurance, £3 15s.; advertising, £250. If you add those together you will find they come to £7,060 16s. 9d., and if you deduct that £7,060 16s. 9d. from the total receipts of £20,788 (I have assumed, of course, the 41s. 5d. for the 877 copies) that leaves you £13,727 8s. 11d. as the profit on the issue, and that, if you will take it from me, comes to £1 6s. 11d. per set.

Mr. MONTAGUE LUSH: What about the establishment charges?

235. Mr. ELDON BANKES: I will come to that in a moment. He has told us that he agrees with us as to what we mean by "cost." Now it is a fact, is it not, that in this account of yours you have debited this first edition with the whole cost of the illustrations—what I call the plant?—Yes, the making of the plates.

236. Of course with regard to the amount paid to the amanuenses the work, equally with the plates, is available for the next edition?—Unless they wish to make alterations.

237. The bulk of the work has been done once for all?—Yes, I should say it has.

238. May I put it to you that of the figure of £7,060, the total of the items for what we call "plant," that means to say, items in the same category as the plates and amanuenses, come to £2,269?—You are beyond my depth altogether now, because I do not agree with the figure, but I accept the figure as far as the hypothetics are concerned.

239. Do you agree with this, that if a publisher was anxious to really find out the cost to him of the first edition he only ought to debit that edition with a proportion of the cost of what I have called the plant?—I do not agree with you at all. When the initial outlay of the book is wiped out then the profits are more, but there are many cases when you do not wipe out the initial outlay at all.

240. It may be so, but when you are considering what the profit of the first edition is, is it not fair to debit that first edition with a proportion only of these what I call plant charges?—No, I do not consider it fair. I consider the first edition should bear the expense of starting the book, and that the others should be a reprint.

Mr. Justice DARLING: By your system, Mr. Bankes, you could never tell the cost of the first edition unless you knew how many other editions there were going to be, because you never could arrive at a proper proportion.

Mr. ELDON BANKES: There is a well-ascertained proportion, I am told.

Mr. MONTAGUE LUSH: Is there? Who says that?

Mr. ELDON BANKES: We do.

Sir EDWARD CARSON: Other people know about these things besides Mr. Murray.

Mr. ELDON BANKES: Mr. Murray does not seem to know.

Mr. Justice DARLING: That is what puzzles me, Mr. Bankes—how you get at the proportion which you would put down for the first edition. The witness puts down the whole, and then he says that the other editions will come cheaper in consequence of that; but if you are going to put down a proportion I do not see how you are going to arrive at it unless you know to how many editions the book will run.

241. Mr. ELDON BANKES: There is another way of looking at it also. I have only partly exhausted it. The other way is a way to which Mr. Murray would be more likely to agree. These plates and so forth are valuable for the purposes of sale?—Selling apart from the book?

242. Yes?—Yes; but such plates are very rarely sold. I could not sell them without the consent of the author, or rather without the consent of the King, because they are his pictures.

243. For the purpose of making an American edition, for instance, or an edition anywhere in the Colonies, it is quite possible that people may require either the original plates or copies for the purpose of producing that edition?—It is possible.

244. In which case, of course, they would have to buy them from you or the author, or whoever they belonged to?—Yes.

245. Therefore again in estimating what this edition cost you, you have allowed nothing for the value of those plates?—How can I allow anything in a statement of facts of what has really occurred? I am not dealing with prophetic futures. My ledger states the facts as they are.

246. Exactly; but it may be of course that your ledger is not exhaustive, because you state facts only as they have occurred up to that date, without taking into account what will happen in the future?—You cannot put down in a ledger as an asset what you think you

might sell a thing for at a future date unknown. It is the most extraordinary book-keeping I have heard of.

247. You may not agree with me?—No, I do not agree with you.

248. As a matter of fact you have, have you not, sold some plates and prints for foreign editions?—Yes, which will all be brought into account.

249. I know it will be brought into account. As a matter of fact in this account, although in another part of it, as between you and the editors you have an account in which you show that you have already sold £526 worth of plates and prints?—Have I? I was not aware of it.

250. Look at the second paragraph?—Yes; you are quite right.

251. You are charging us with knowing nothing about your business?—I admitted my mistake at once. You did not. That is not clear profit, you see.

252. I quite agree?—Before you have done with that I should like to ask you one question. In making your comment you appear to have omitted one fact, which is that I have to bind those 2,000 copies of the second edition and advertise them, so before you strike your balance you have to deduct a good deal for hypothetical binding and advertising.

253. In the account I have been going through with you I have only been dealing with the sales of the original 10,000?—But you had the price of 877.

254. Yes, because according to your own account that is a portion of the original 10,000?—I will put it in a clearer way. How are you going to sell your 877 copies without any advertising?

255. Because you have already sold a considerable number?—You think advertising what has gone in the past will do for the future, do you?

256. Not for all the future?—I think your argument is quite unsound.

Mr. Justice DARLING: A much better answer would be because of this trial.

Mr. ELDON BANKES : He gets this advertisement free, my Lord.

257. Now another question or two about this account. As between yourself and the authors, of course, this account is quite correctly made out, I agree; but if you would not mind looking at it you will see that you have, in fact, sold 3,331. You have 3,198 ?—Yes.

258. You have sold 3,331 at £2 12s. 6d. ?—Yes.

259. As a matter of fact as between you and the author you quite correctly state that you have sold 3,331, because you are entitled to sell 25 as 24 ?—Yes.

260. Can you tell me from your books how many of the difference between the 3,331 and the 3,198 you have in fact sold and received the money for ?—It would be a very difficult thing to do. I have not got the figures. You may take it that all those copies were sold. I very much doubt if they were not all sold with the exception of possibly one or two.

261. I have the details of your sales, and with the exception of those five firms that I gave you the bulk of the sales are in small quantities. I have your town subscription list before me. For instance, if you sold a man 12 copies you would not sell them to him at the rate of 25 for 24, would you ?—It is possible that some man in a few days might come and ask to make up his number, and I do not hold to the rule so very tight as that. I might allow some of these men to make up their numbers to 25, in order to get the odd copy.

262. May I take it that, apart from such arrangement as that, in the cases where you sold less than 25 books you would not have sold 25 for 24 ?—There are some cases where I do not sell 25 for 24.

263. In those cases you have in fact received £2 12s. 6d. per copy ?—Yes ; probably in some cases.

264. That does not appear in these figures which I have given you at all ?—But I have sold some at less than that.

265. There may be some ; but I am not for the moment looking at the amount, and you have not given

us the opportunity—I am not complaining—of looking at any book of yours by which that figure could be ascertained?—It extends over many thousands of entries.

266. Does it?—I do not know that I can. I might be able to ascertain the figure, but I can assure you—and I am here upon oath—that it is a very small trifle.

267. You had forgotten about the £520 for the sale of the plates, and it may be that you look upon that as a trifle, but we have estimated that the amount you received on these differences between the 25 and 24 is—I cannot give you the figure for the moment, but that figure would have to be taken into account in arriving at the amount you have actually received. You would have to add to these figures in the authors' ledger whatever you in fact received in cases where you did not sell 25 as 24?—Yes. I cannot tell you at any given moment. It is a very small amount, whatever it may be, and I cannot give you that figure.

268. There is another item in the same connection that I must ask you about. As between you and the authors, when you sell 25 as 24 it is less 10 per cent.?—Yes.

269. And if you do not sell 25 for 24 you get the price in full?—It depends. It may go into an account which is less 10 per cent. all over, and probably it is.

270. So that this requires adjustment not only in ascertaining the 25 for 24 point, but it wants adjusting to ascertain the cases in which you did not allow 10 per cent.?—Yes, I see what you mean.

271. As a matter of fact, having regard to the fact that there are so many small sales, in the bulk of the sales the 10 per cent. was not allowed?—I cannot say that off-hand. I can get the figure, I dare say, but I cannot say off-hand.

272. You will see that that figure requires considerable adjustment, and in our view our estimate is that these figures ought to be increased by about £600 in order to meet those two figures?—Very well.

273. You do not agree, but you have all the material in your books which will enable you to find out exactly whether our estimate is right or wrong ?

Mr. MONTAGUE LUSH : Which estimate ?

Mr. ELDON BANKES : The £600—the difference between the 25 and 24 and the 10 per cent. ?—I will endeavour to find that out for you.

274. Now, on the other side of the account there is another adjustment required because as between you and the author you were entitled to have 5 per cent. upon all your payments ?—Yes.

275. As a matter of fact you did receive that 5 per cent. ?—Not on all.

276. On the bulk of them ?—On the bulk of them.

277. So that there is an additional figure there which would have to come into the account to make it absolutely accurate to show what you actually received ?—That is a matter between me and the author.

278. I quite agree ; but when you are considering how much you put into your pocket as profit you are bound to take that 5 per cent. into account ?—Then you must take the interest on the money which I advanced to the authors, the interest on the money I have had to pay to the printers, and the interest on the money where accounts are outstanding in my favour. Booksellers do not pay up to time. Then you have to take bad debts and a variety of other things into account. I have already had one bad debt over this book of £66.

279. You were saying on the other side of the account that you were entitled to have interest upon the amount you paid the printer ?—No, I am not entitled to it, I do not ask for it ; but if you are going to make out an account in the way you suggest I should be entitled to claim it.

280. You said that if you took my way of making out the account it would be right to debit the authors with interest ?—Certainly.

281. As a matter of fact you did that ?—I should have interest on the money I advanced.

282. Did not you do that?—No; never a penny.

283. I have “Edinburgh Press; interest of 5 per cent. on £290 for one year and eight months, £24 3s. 4d.” Let me refer to that in your own account. Will you look at your Production Expenses Book, folio 273?—Yes, I have it; but that is a totally different matter.

284. What is that for?—That is with regard to the printing account. There was an enormous quantity of type required for this book, and quite an exceptional quantity had to be cast for the purpose—I forget how many tons; but owing to the exigencies of the authors we had to keep a very large quantity in type at the same time—two volumes, or more than that; I think very nearly three volumes. The printer said, “It is hard that we should have to buy all this extra type specially for this book,” and I wrote to the authors and asked them to allow me to pay this 5 per cent. on the capital in order that they should keep the type standing for them. It does not give any profit to me.

285. It is not interest on your money?—No; it is interest that I have paid out to the printer.

(Adjourned to to-morrow morning at 10.30.)

## SECOND DAY

Mr. JOHN MURRAY, recalled

Further cross-examined by Mr. ELDON BANKES

286. Since last night have you been able to look into any of those points I asked you about—the unsold copies, and the discount ?—I have, and I must apologise for not being able to give them yesterday. During the sixteen years I have been at the head of the business I have been so busy that I have perhaps lost sight of the details.

287. Do you mind allowing me to ask you a few questions about the unsold copies ? We know there are, or there were, up to the date when you made up your books for us, 877 on hand ?—Yes.

288. Can you tell me now this morning how many of those have been sold, and for how much ?—No ; I have not considered that. The books were down in court, and I have not been able to get it, but I daresay we can give those figures. I think we gave you the details.

289. What is the amount ? Because you would not accept my suggestion yesterday about the price, and therefore it is very material that I should find out, if I can, the amount. All I know about it is this, that from the books you have shown us you have only sold two of those copies at a special price. That is right, is it not ? —I believe by the books that is so.

290. So that I may take it that, so far, of those 877, whatever number you have sold have been sold at the

full trade price, with the exception of two copies?—  
What do you mean by "the full trade price"? \*

291. £2 12s. 6d.?—No; there is a discount and there is an allowance.

292. I am coming to that in a moment. I am speaking of the £2 12s. 6d.; I am speaking of the trade price?—I am also speaking as to the trade price, and I ask you what you mean. You stopped me when I tried to explain.

293. You have got a book in which you enter all the special sales?—Yes.

294. And those special sales are sales which you consider as not being at the trade price?—Quite so; below trade price, or not at the trade price.

295. And the fact is that there are only two copies recorded in your special sales book?—Quite so.

296. Therefore I may assume, may I not, that all the rest are trade prices?—I ask you what you mean by "trade price"?

297. You are the only person who can tell me how much in fact those copies which you did sell realised?—If you will allow me to explain what you stopped me before in doing, I think I can tell you this. You asked me yesterday what became of copies which were sold in less quantities than 25 or 24.

298. I am coming to that in a moment?—I am coming to it, too, and I cannot answer your question unless you will allow me to explain.

299. Would you mind dealing with it in my order? I am going to deal with the 24 and 25 separately. I am now simply asking about the price at which you sold any copies you sold of the 877?—Yes.

300. Can you or can you not give me the figure which you actually realised for those?—I cannot give you the figure in each particular case, but I can explain the rates at which they were sold.

301. There appear in your books the actual amounts you received?—Yes, of course it appears in the invoices; but there may be hundreds of invoices. You see you

will not allow me to explain the matter, and how it is done. If you will only listen to me for one moment I think I can make the matter clear.

Mr. Justice DARLING : Supposing you let him give it in his own way.

The WITNESS : The orders come in every day, sometimes in hundreds, and at busy times in the year there may be a great many hundreds of invoices made out. There are the town invoices, and there are the country invoices, and there are the Colonial invoices, and there may be foreign invoices. All these are made out, and there may be one copy or two copies, or whatever it may be, of the Queen's Life in hundreds of these invoices in the day, and thousands in the course of six months. You will obviously see that to pick out each individual item from all these would be a work not of hours but of days. It would take a man many days to pick out from thousands of invoices going over six months all these items. In order to avoid that almost impossible work, which would involve doubling my staff, I have made this average which you see on the accounts, and now I want to see how that is treated. Mr. Banks has very properly asked as to the 25 and the 24, and it is easy enough when 25 are sold at once. There are a great many booksellers, as I see, who are provided in less numbers than 25. What I wanted to explain to Mr. Banks, and he would not allow me, was this—that if a bookseller does not buy 25 we make an allowance in every case. He is allowed to get the allowance of 25 in the smaller number. If he buys 13 he gets them as  $12\frac{1}{2}$ , if he buys seven copies he gets them as  $6\frac{3}{4}$ . Therefore, supposing a man has ordered one day four and he has found that those sell well, and he comes the next day and says : "I would like to have three more if you will allow me to make up the seven as  $6\frac{3}{4}$ ," we give it him, so that the proportion goes down even to the smaller numbers. We allow 10 per cent. as an average, because in some cases  $12\frac{1}{2}$  is allowed, and we go further than that, and I tell you that we are so anxious to prove the fairness of this

average, which you will see now is absolutely straightforward, that a year ago we took a book which had sold very well, and for our own satisfaction we picked out of the books every copy of that book which had been sold. It was a most laborious work, but we picked out every copy of that book that had been sold in every way, going through invoice book, till book, and cash book—we worked it out, and we found that our process of averaging worked within a fraction of 1 per cent. of the amount received.

302. That is what you wanted to answer?—Yes.

303. It is the fact, is it not, that the actual moneys you receive appear somewhere in your books?—In some hundreds of invoices, thousands of invoices.

304. It is the fact that you have never given us an opportunity of looking at those?—Yes; all those books have been in your hands, every one of them. Your representative came to my office and saw every book.

305. You have given us the authors' ledger and the cost production book?—Yes, and the invoice book.

306. But, of course, nobody except yourself can get out of the invoice book the exact figures for the sales of these copies?—Those books were put in the hands of your representative unreservedly—every book he asked for; and if he did not choose to see them it is not my business to go through the work which he should have done.

307. At any rate you have not given it up to this moment?—No; but I have given you the general average at which the books are sold, which you may rely on; and I am on my oath here.

308. Do your books also show the instances in which you allowed your buyers the 10 per cent.?—Yes, I suppose they would. You see the 10 per cent. would not necessarily be deducted from each invoice. It might be deducted from the whole account, therefore the invoice might not show it. It might be an account was running for months, and an item would be added on to another day, and then there might be hundreds of items, and

the discount would have to be deducted from the whole amount.

309. For that purpose it would be necessary for some one who has knowledge of your books to pick out the figure ?—No ; I do not think so. Anybody could get at them if they chose to take the trouble.

310. I understand that we have not been shown the accounts, but only the invoices ?—That is all very well, because I do not make up my accounts every day. I was not asked to make up any account.

311. Is it the fact that in a considerable proportion of the sales of this book you did not allow the 10 per cent. ?—Some were allowed more, some less.

312. May I take it in the small purchases you would not allow the 10 per cent. ?—Some small purchases we might not. I would some ; as to some I would not. Wherever 10 per cent. is mentioned that is charged for the amount, whatever the number.

313. There is one other question I want to ask about —the plant. You do employ a gentleman to go through your books at the end of the year ?—I do.

314. Do you know how he deals with the plant ? Does he deal with it as capital expenditure ?—No ; it goes into our authors' account as part of the expenses of producing a book.

315. Is no credit taken at the end of the year for the value of the plant in making up your balance sheet ?—I should say certainly not. If he had suggested such a thing I should have told him it was not a proper way to deal with it.

316. So much for the figures. There are a few other figures I want to ask about. Your Counsel has referred to this book war, and he says it is not material to this case to decide who is wrong and who is not. This so-called book war has been going on, has it not, since October 1906 ?—I will take your date for it. I believe that is about the time.

317. Some rather hard language has been used on both sides ?—Possibly.

318. And you, yourself, have you not, have taken part in the war?—I have not written anything about it, and I have not answered any attacks for 18 months, I think, or thereabouts.

319. I was not alluding to the date, but during the war you have yourself taken part in it?—Yes, certainly, I have taken part in it.

320. Are you a member of the Publishers' Association?—I am.

321. And an active member, are you not?—I am on the Council. I have been President.

322. I suppose the action that the Publishers' Association has taken in this war has been taken with your sanction?—Yes; as a rule any action is taken by the division of votes on the Council. Some agree to some steps, which are not agreeable to others; but generally.

323. Do a large number of the principal publishers belong to the Association?—Yes.

324. Is it the fact that the Association have rigorously boycotted "The Times" Book Club?—I do not accept the word "boycott" at all.

325. I will ask you about the facts. The rock upon which the Publishers' Association and the Book Club split, was it not, was on the question of the right of "The Times" Book Club to sell books as second-hand within six months?—Yes.

326. That was the point?—That was the rock.

327. Did the Publishers' Association resolve, in the first place, because "The Times" would not give way, not to sell any of the books published by any members of the Publishers' Association to "The Times" at all at trade prices?—Yes; after due warning, of course.

328. The warning we admit. Did they go further, and say that they would not sell any of their books to booksellers unless they undertook not to supply "The Times," except at trade prices?—Individuals may have said so. There has been no general enactment; it was left to individuals to do as they chose in the matter.

329. Were you one of the individuals who took that line?—Yes, on the expiry of the agreement which I had for six months or so.

330. That was the first step, and when that did not succeed did the Publishers' Association resolve not to sell any of their books to "The Times" Book Club at any price?—It was not a resolution of the Association, it was the action of individual members. The Association has always made it a principle not to control the price at which we supply anybody.

331. Was there a general agreement?—There was no agreement. The thing was discussed, and each one was left to do as he thought best.

332. Did they take common action?—I do not know what "common action" means. If you give me a law dictionary and explain to me what it means I will tell you. I acted on my own initiative.

333. You took the hard step not to supply any books published by you to "The Times" Book Club at any price, and, further, you did your best to prevent any bookseller supplying any book to "The Times" Book Club at any time?—I did.

334. Do you say I am wrong in suggesting that that was a rigorous boycott?—Yes.

Mr. Justice DARLING: I have seen it frequently mentioned that a very great person said it was properly to be described as exclusive dealing.

335. Mr. ELDON BANKES: Perhaps that would be the better word. Of course, Mr. Murray, you took that action with the view of breaking up the Book Club so far as they would not come to your terms?—Breaking up is too strong. Nobody has ever wished to break it up.

336. Either breaking it up or compelling them to come to your terms?—Inducing them to come to our terms.

337. With regard to this particular book which you published, "The Letters of Queen Victoria," did you find out that "The Times" were obtaining copies from Simpkin & Marshall?—I saw they were informing

their subscribers that they could obtain copies, and I had every reason to believe they had obtained them.

338. Did you try to find out where they obtained them?—Yes.

339. Did you find out they had obtained them from Simpkin & Marshall?—No.

340. At any rate, did you apply to Messrs. Simpkin & Marshall?—May I here say what I did?

341. Yes?—I suspected Simpkin & Marshall.

342. Did you go to Simpkin & Marshall and tell them that if they supplied any more you would put them in the same category?—No; I did not do that.

343. Did you tell them they must not supply them?—I said, “I do not wish these copies to come to ‘The Times’ Book Club if you can prevent it.”

344. So much for the Publishers’ Association. One other fact I want to know, and that is this. Another question I want to ask about is the endeavour to induce “The Times” to take your view. Did you withdraw all your advertisements from “The Times”?—I did.

345. Did the publishers generally who were members of the Association withdraw their advertisements?—I believe they did.

346. I suppose that was with the same object, of inducing “The Times” to come to your views?—Yes.

347. Did you ever advertise in a paper called “The Outlook”?—Yes.

348. Do you know that “The Outlook” published an article in favour of “The Times” Book Club?—I think I remember seeing it; it is some time ago.

349. Did you convey to the editor of “The Outlook” that if any such article appeared again all advertisements would be withdrawn from “The Outlook”?—I have no personal recollection of having had any personal communication with the editor of “The Outlook.” It may have been done in my office, but I did not write myself, to the best of my recollection.

350. Was Mr. Garvin at that time editor of “The Outlook”?—I do not know Mr. Garvin.

351. Do you remember a letter that Mr. Garvin wrote to "The Times"?—No.

352. If I read it to you perhaps you will recollect it.

Mr. Justice DARLING: What is about the date of that?

353. Mr ELDON BANKES: December 20th, 1906. Let me just read it to you and see if you recollect it. Mr. Garvin writes from the Savile Club: "Sir,—To put an end to misconceptions very widely existing, will you allow me to say that I am no longer responsible for 'The Outlook,' nor connected with it in any way? The unwelcome task of dissociating myself publicly from its contents is forced upon me by a prominent feature of the two latest issues. Some seven weeks ago 'The Outlook,' under my editorship, had a leading article dealing with the book war, and expressing an independent opinion in favour of 'The Times.' As, for reasons unnecessary to state here, that article was not seen by me in proof, I can the more truly say that it was written with remarkable force, and the most evident sincerity, and that I did not wholly agree with it on every point. In the ordinary course of things another article would have appeared somewhat modifying the view. At this point, however, the issue was very seriously changed. The publishers' advertisements flooded the columns of 'The Outlook.' It was conveyed to me that unless my paper came into line with the greater part of the Press and condemned 'The Times' the advertisements were unlikely to return. I refused twice to write any article or to allow any article to appear for a mere inducement of that kind." Then, he says, immediately there was change of proprietors there was a change. Did you ever see that letter?—I do not remember it.

Mr. Justice DARLING: A change of proprietors, not merely of editors.

354. Mr. ELDON BANKES: The proprietors and editors. I want to know, do you approve of such an action as that, threatening a paper to withdraw its advertisements if it wrote articles in favour of "The

Times" ?—I am free to give advertisements to whom I choose, and I did not choose.

355. It may bring on conduct like that ?—It all depends on the way it is conveyed. If it is conveyed in a particular way, I say it might not be altogether the right thing. If it is merely conveyed in this sense : "I do not altogether approve of the policy of your paper, I quite disapprove of the extreme politics of the paper," I am free to put my advertisement into a paper I like, and withhold it from a particular paper.

356. Do you not consider that a threat : "If you do not take the line I want you to take I will not give you my advertisements" ?—You must give me the actual words.

357. I have read you this ?—That is not a letter sent by me.

358. It was publicly published ?—I am not responsible for it.

359. It was never denied ?—I do not remember the letter. You must not ask me to deny it, because I cannot tell you.

360. Were you one of the people who advertised in "The Outlook" ?—Yes.

361. Did you in fact also discontinue, or say that you would discontinue, them ?—I have no recollection of it.

362. You will not say anything more ?—I cannot say anything more, because I have no more to say.

363. Another word or two about this war. It is the fact, is it not, that throughout "The Times" has laid its columns open to its opponents as well as those who favour it ?—I cannot tell you whether they put all their opponents' answers in or not.

364. Have you ever heard of anybody who has written denouncing the action of "The Times" being refused admission to its columns ?—I think I have, but I cannot say for certain.

365. Is it not the fact that a very large number of letters did appear in "The Times" taking a hostile view on "The Times'" action ?—Yes; that is quite true.

366. You agree to that?—Yes.

367. Do you know Mr. Lane, the publisher?—Very slightly.

368. Did you see the letter which he wrote to “The Times” about their action in opening their columns to their opponents?—I have seen a letter of his, but I cannot recall it.

369. Let me ask you if you remember this letter, and ask you if you agree with it.

Mr. F. E. SMITH: I do not know whether my friend is putting this letter in?

Mr. ELDON BANKES: Oh, yes; there is no question about putting in evidence. Please note what Mr. Lane says at the end of a long letter.

Mr. Justice DARLING: What is the date?

370. Mr. ELDON BANKES: The 29th October, 1906. He says at the end of a long letter in which he denounces “The Times” pretty strongly: “In conclusion, I consider it but just to you, Sir, to make public acknowledgment of your fairness in printing your opponents’ letters, and in continuing to review impartially the books of publishers who are in disagreement with you on the question of the attitude of your Book Club.” Do you remember that letter?—I remember that letter; I do not remember the particular passage, but it comes back to me.

371. Do you agree with the last passage. Do you think it is a fair statement?—It is quite fair. I do not see how you are to carry on a controversy unless you let in your opponents’ answers, or a debate either.

372. You agree with that. It deals with two points, but it acknowledges the fairness of “The Times” in printing opponents’ letters, and in continuing to review impartially the books of publishers who are in disagreement with it. Let me ask about your books. It is the fact that during this war you have been sending your books to “The Times” for review?—Yes.

373. It is the fact, is it not, that until this occasion which we are now considering you have never had

occasion to complain of any review of your book on the ground that it was not fair?—I think that reviews in “The Times” are invariably very well done, done by very good men, and I always read them with interest.

Mr. Justice DARLING: Apparently he reads “The Times” still.

Mr. ELDON BANKES: He takes all the advantage of it, but he will not give us any advantage.

374. You have taken full advantage of the reviews in “The Times” for advertising your books?—I make them a present of a copy, and it is free to them to do what they like with it.

375. You would not like it if they refused to review your books?—I should cease to send them copies.

376. That would be your way of answering?—It is my way of acting.

377. It is the fact, is it not, that not only have you sent your books for review, and you have been pleased with the reviews, but have you written to “The Times” to ask them to give you copies of the Literary Supplement in order that you might circulate it as an advertisement?—Asked them to give me copies?

378. Yes, have you not?—It is absolute news to me. I buy “The Times” every morning myself. I have bought it for many, many years past.

379. Do you get free copies of the reviews of your books?—From the Press Cutting Agency.

380. I mean from “The Times” office?—So many hundreds of papers come. I may tell you every morning I have to open some hundreds of letters, and quite a pile of papers of all sorts come. I cannot go through them all. I do not know where they all come from. There is hardly a leading newspaper in the kingdom that does not send itself to me, and I daresay “The Times” is among them; but I could not say.

381. One other thing you say is this. You carried the war into the enemy’s camp with a vengeance?—Where is the camp situated?

382. I will explain to you. In our columns. Let

me ask you about this. It is the fact, is it not, that before this war began you were under a contract with "The Times" to take a certain portion of space for the advertisement of your books?—Yes, I was.

383. After the war began you ceased to advertise your books in our space?—I occupied the space.

384. That is what I call carrying the war into the enemy's camp. Instead of advertising your books in the space this is the advertisement you put into our columns, and we accepted it. You took the space in order to advertise your books, and instead of utilising it for that purpose this is what you inserted: "Mr. Murray's List. This space was engaged before the declaration of war of 'The Times' against the proprietors of the copyright. In consequence of the regrettable dispute which has arisen in regard to 'The Times' Book Club, readers are requested to refer to the advertisement columns of the other daily and weekly papers for details of Mr. Murray's new and forthcoming books." That was done intentionally?—I thought it was a very good joke.

385. It is rather serious joking for us; you realise that? We have not come to the end of it: "Catalogues and explanation of this advertisement afforded gratis on application to John Murray, 50, Albemarle Street, London." Did people apply to you for an explanation of the advertisement?—Yes, very likely they did.

386. What did you send them? Is it not the fact that you sent them a collection of the most damaging articles against "The Times" that you could find?—No; I think I sent them a pamphlet called "'The Times' and the Book War."

387. It was not favourable to "The Times," was it?—No.

388. It was a selected edition of the most unfavourable comments you could find?—No; it was a pamphlet written *pro hac vice*, with newspaper extracts at the end.

389. This is it. I am coming to it in a moment. You

picked out the most damaging things you could find?—I took out the most amusing.

390. At any rate you took care they were not favourable to "The Times"?—When I say I did you must remember that it was not I individually who put those in. It was published by the Publishers' Association, that pamphlet, was it not?

391. I am not sure, but there was a good deal of this article that you sent with it?—There was a copy of an article that appeared under my name, or over my name, in "The Daily Chronicle."

392. Over your name. Did you write it or get somebody to write it?—I wrote it. I do not let other people write over my name, as some other people do.

393. I was anticipating that. That is why you used the remark, "Over your name." Did you write it?—I wrote it.

394. Absolutely and entirely yourself?—I wrote it entirely myself.

Mr. Justice DARLING: Why do you ask? Is it too clever?

Mr. ELDON BANKES: I want to get some of the language Mr. Murray used. I wanted to know whether it was his own.

395. You have told me that there was hard language used by both sides. In some of your writing you charged "The Times," did you not, with cooking accounts for the purpose of producing misleading results?—It was absolutely true.

396. I am not saying whether it is true or not, I am not going into the merits?—I did say it.

397. You charged "The Times" with cooking accounts for the purpose of producing misleading results?—Yes.

Mr. Justice DARLING: Cooking what accounts?

398. Mr. ELDON BANKES: Cooking publishers' accounts. You realised that that was strong language?—Yes.

399. Mr. Justice DARLING: It is not cooking accounts in the sense of cooking accounts and getting money by

it. It is misrepresenting their own accounts, the publishers' own accounts?—Yes.

Mr. F. E. SMITH: A copy of that pamphlet has been handed to a gentleman of the Jury without your Lordship's knowledge.

Mr. Justice DARLING: The only thing I request of the Jury is that they will not read it now, because otherwise they will miss some of the cross-examination.

Mr. F. E. SMITH: I only mentioned it because a copy had been handed up without your Lordship's leave.

Mr. Justice DARLING: I cannot ask for it back.

400. Mr. ELDON BANKES: My learned friend and I apparently are in agreement. We are not going outside this case to try the merits of this other dispute. I want the Jury to understand that there was hard language used on both sides. You agree that you charged them with cooking accounts. Did you also charge them with absolutely deluding the public by foisting off upon them a worn-out encyclopaedia?—I did not say that, but it was perfectly true. I have no recollection of saying that. If you can, will you show it to me in any writing of mine?

401. Have you got the pamphlet before you?—Yes.

402. You say on the first page: “‘The Times’ declare war on the publishers, and the dispute is being carried on”?—Are you referring to this as in my writing?

403. You say what you sent?—I said I had written something over my name to “The Daily Chronicle.” A good part of this was my writing, but it was cut about before it was published, so that I really do not know what is left of mine and what is not. I do not accept the authorship of this, because my name is not attached to it.

404. This is one of the documents you sent to people who asked for information gratis?—Yes.

405. You have explained that you take the responsibility for it?—Yes.

406. Now about the “Encyclopædia Britannica.” The

second paragraph says : "The first move was to father the circulation of the ninth edition of the 'Encyclopædia Britannica,' which, having served its purpose over here, and fallen into the hands of an American syndicate, was reintroduced to the British public by all the processes familiar to the Transatlantic 'promoter.' It mattered not that a great part of the work was completely out of date—it was eagerly swallowed by the public, which believed, on the strength of the reputation of 'The Times,' that it was getting a new work and regarded it as a real bargain." Is it not a fair interpretation of that language to say that whoever it was whose writing it is was charging "The Times" with foisting upon the public a worn-out encyclopædia ?—Yes.

407. Take your own language ?—It was pointed out to me in the edition of 1899 that it was expected that Dr. Livingstone would soon be heard of on the Lualaba ; he was working in that direction. That was a good many years after Dr. Livingstone died. I believe Mr. Disraeli was still Mr. Disraeli, and had not become Lord Beaconsfield, though he had been dead fifteen years, and it was shown to me that there were articles very far out of date with regard to that, and as President of the International Publishers in London there was submitted to me a paper pointing out all those inaccuracies. The gentleman wanted to read this paper at the Congress, and point out the inaccuracies, and I refused to have that paper read. I am quoting that as an example to show that that was what passed.

408. I do not go into the merits of this dispute. I thought we were going to stand up to you. "The Times'" answer was that they advertised this as a reprint ?—I do not know that.

409. What we are complaining of is that you are accusing us of foisting a worn-out encyclopædia on the public when we have never advertised or professed that it was a new one, but we had sold it as a reprint. If we are to go into the merits, that was the contention on

the one side or the other?—I would rather see the book and rather pick out at first hand.

410. I know you will not accept anything I say?—May I go back to the advertisement and tell you that when that advertisement of mine was sent in I thought they would refuse it. I had a letter from Mr. Moberly Bell that they put it in because they thought it would do me a good deal of harm.

411. Have you got that letter?—I believe I could find it for you. I have not got it in court. I never knew this question would crop up.

412. The passage I was referring to is in this pamphlet. If you look under the heading of "Exorbitant prices" you see there the writer of it says: "The publishers' policy of exorbitant prices is a phrase dear to the managers of 'The Times' Book Club." That is correct, is it not?—Yes.

413. The attitude taken by "The Times," rightly or wrongly, throughout was that the publishers' prices were exorbitant?—Yes.

414. And the publishers throughout were writing to "The Times" to say that "The Times" were cooking the accounts in order to produce these results, and so the battle went on?—Yes.

415. And you took your part in it?—Yes. By "cooking the accounts" we meant that they omitted from their estimates the various things which were absolutely essential to the production of the books.

416. Of course you might have expressed it in more polite language. If there had not been a war on, I suppose you would have done so?—I do not know. I think that is very polite language.

Mr. Justice DARLING: What is the language?

417. Mr. ELDON BANKES: This is the language, on the top of page 8: "On the other side it is assumed that every copy is sold, and none are left on hand (which is hardly ever the case), and no allowance is made for copies presented to author, to the Press, etc. In short, both sides of the account are 'cooked,' in order to pro-

duce an inaccurate result." I think I have finished what I have to ask you, except a word or two about what happened after this letter you complain of was published. You sent to your solicitors about it?—Yes.

418. And they wrote that letter in which they inserted an apology which you required to be published, and in answer to that you received first of all a letter from Mr. Moberly Bell saying that he had sent your letter to "The Times'" solicitors?—Yes.

419. Then you received a letter from Messrs. Soames, Edwards & Jones, who are "The Times'" solicitors, on the 25th October, saying this: "Dear Sirs,—Your letter of yesterday's date addressed to the editor, proprietors, and publishers of 'The Times' has been handed to us as solicitors to that journal. Our clients instruct us to say they regret that if in publishing 'Artifex's' letter they have in any way done your client, Mr. John Murray, an injustice, and that in to-morrow's paper will appear a paragraph in which this expression of regret will be repeated. In giving publicity to the letter our clients considered they were merely publishing a further contribution on the subject which has given rise to considerable controversy in which Mr. Murray himself has taken part by writing letters to 'The Times' on the subject, which have been published. We need not say that if Mr. Murray wishes to write any further communication on the subject-matter of the controversy, or with reference to 'Artifex's' publication will be given to it." I quite accept that if you chose to bring an action instead of accepting that, you were entitled to do so?—Accepting what?

420. Accepting the offer to write anything you chose about "The Times"?—Excuse me for saying that they did not carry out the terms of that letter. They said they would express regret, and they never did. They gave me the pledge in that letter that they would express their regret for having done me an injustice. If you look at the notice in "The Times" you will find that regret was never expressed.

421. I will read that passage again. What Messrs. Soames, Edwards & Jones said to you was this : "Your letter of yesterday's date addressed to the editor, proprietors, and publishers of 'The Times' has been handed to us as solicitors to that journal. Our clients instruct us to say they regret that if in publishing 'Artifex's' letter they have in any way done your client, Mr. John Murray, an injustice."

Mr. Justice DARLING : What does that sentence mean ? because I cannot parse it.

Mr. ELDON BANKES : They say that "they regret"—that is "The Times" regret—"that if in publishing 'Artifex's' letter they have in any way done your client, Mr. John Murray, an injustice." They regret if they have done an injustice.

Mr. Justice DARLING : They do not say "if." They say they regret that if in publishing the letter they have in any way done an injustice. The sentence ought to go on with something which would accord with "that," but it does not. It should have been so, or should have been something else.

Mr. ELDON BANKES : I think the meaning of the letter is plain. They express regret if they have done an injustice. There are two statements. They express a regret if they have done Mr. Murray injustice, and that in to-morrow's paper will appear a paragraph in which this expression will be repeated.

Mr. Justice DARLING : They only regret if they have done an injustice, and they regret that in to-morrow's paper there will be an apology.

422. Mr. ELDON BANKES : I think your Lordship is doing an injustice to the writer of the letter. Now we will see what was said. This is what was said : "In our issue of the 19th inst. under this heading we published a letter signed 'Artifex' with reference to this matter. Mr. John Murray's solicitors write to us that the work is not Mr. Murray's property. He has merely been employed as the publisher, bearing the cost of its production, which far exceeds the figure in the letter, and he

will be remunerated by a fraction of the net proceeds." Let us stop there. That was a correct extract from your solicitors' letter?—I believe so.

423. Then they go on : " We willingly give publication to this statement, and regret any misstatement or error our correspondent may have made " ?—Yes. First of all you do not admit any misstatement, and secondly you do not express any regret for injustice done to me, in the terms of your solicitors' letter. That was not fulfilled in this paragraph.

424. That is how the matter stood when you issued your writ?—Yes.

Mr. Justice DARLING : It is only that they " regret any mistake or error our correspondent may have made," but they do not say that their correspondent did make a misstatement.

425. Mr. ELDON BANKES : I am not criticising the language of it. I only put it to Mr. Murray?—I do not consider that an apology at all.

Re-examined by Mr. F. E. SMITH.

426. You have been asked by my learned friend whether " The Times " gave you the opportunity of writing to the paper denying the statements?—Yes.

Mr. ELDON BANKES : Writing any letter he liked.

427. Mr. F. E. SMITH : Did it commend itself to you to write to " The Times " saying you had not got any victims?—It never occurred to me to write to them at all. I did not do it for 18 months, and I never dreamt of beginning again.

428. Did you write to them to say you had not been plundering any one?—No. What was the good? I should probably have had another letter repeating the statement. I was not before a tribunal, as I am now, which will show fair-play. I was in the hands of people who would have twisted what I said for their own purposes.

Mr. ELDON BANKES : That is very strong language.

429. Mr. F. E. SMITH : After this letter or this statement in "The Times" of October 26th, which is relied upon as an apology, did the further letter appear, also signed "Artifex," on October 28th ?—Yes.

430. My learned friend asked you whether that was not all that happened between your solicitors' letter and the issue of the writ. Just listen to this letter of October 28th, after your complaint : "Sir,—I observe in your issue of to-day that Mr. Murray takes exception to the accuracy of my statements about 'The Letters of Queen Victoria.'

Mr. ELDON BANKES : It is my mistake. I thought the writ had been before that.

Mr. Justice DARLING : This letter appeared on the 28th, but it is dated that very same day as the paragraph which "The Times" call an apology, and which Mr. Murray does not—the 26th.

Mr. F. E. SMITH : The writ was issued on the 30th.

Mr. Justice DARLING : Never mind what was written. This is written by "Artifex" on the 26th.

Mr. F. E. SMITH : By an "Artifex."

Mr. Justice DARLING : It is published in "The Times" two days later than what they call the apology.

431. Mr. F. E. Smith [continuing to quote] : "I observe in your issue of to-day that Mr. Murray takes exception to the accuracy of my statements about 'The Letters of Queen Victoria.' I regret very much if I have done Mr. Murray injustice, and I can assure him it is merely an accident that his name appears in the matter rather than another's." You were unfortunate, it was only an accident. "Any publisher bringing out a book of that kind at that price would have merited precisely the same strictures which, it must be remembered, are only a portion of the controversy in which Mr. Murray has personally taken a considerable part. If the work is not Mr. Murray's property there is nothing that can offer the least indication of the fact. It bears Mr. Murray's name, and

would be supposed by anybody to be his. If the cost of production broadly exceeds the figures I gave, Mr. Murray has not bought in the best market, as I was entitled to assume that he would. If there is some great expenditure unconnected with production, Mr. Murray's case would be strengthened by his telling us what it is." They made a case at that time?—What case had I? What right had I to admit these things? I had no case to defend myself. They say if any publisher had brought out a book of that kind at that price they would have been worthy of blame. I would like to point the attention of the Court to the fact that a book of about the same size, which was published at a guinea a volume, was published by "The Times"—

Mr. Justice DARLING: This is the very thing I said yesterday I thought we could not go into. We will try "The Times" on another day.

432. Mr. F. E. SMITH: My Lord, I did not ask that: "He is to be remunerated by a fraction of the net profit. What fraction? A fraction is anything less than the whole. In the absence of anything to indicate that the book is not brought out by Mr. Murray in the ordinary way, I submit that my criticism of the price was entirely natural and justifiable. The price is the main thing; whether it is charged by Mr. Murray or Mr. Snooks is of no consequence. The price is exorbitant, and Mr. Murray cannot be surprised if it is supposed to be his book until we know for whose benefit it is charged. I have to apologise"—that is another matter. That was written apparently the same day as this so-called apology. Now you have been asked about statements made by you in the course of the book war. Have you ever made a statement which was not true, as far as you know in the course of the book war?—Certainly not.

433. Have proceedings ever been taken against you for making untrue statements?—No, none whatever.

434. Now let me ask you a question about the Encyclopædia Britannica." What is said in "The

Times and the Publishers" pamphlet, in reference to "The Times" Book Club, is this: "The first move was to father the circulation of the ninth edition of the 'Encyclopædia Britannica,' which, having served its purpose over here, and fallen into the hands of an American syndicate, was reintroduced to the British public by all the processes familiar to the Transatlantic 'promoter.' It mattered not that a great part of the work was completely out of date—it was eagerly swallowed by the public, which believed, on the strength of the reputation of 'The Times,' that it was getting a new work, and regarded it as a real bargain." Was there a single word in that that you were not, and are not, prepared to justify?—I did not write that paragraph, but I believe every word of it to be true.

435. As for the letter which you wrote yourself, you say equally about that that it is true?—Yes.

436. I want to ask you a question about the advertisements in "The Times" and the correspondence about which my friend has asked you. First of all, have you any recollection at all of having written or communicated in any way with the proprietors of "The Outlook"?—No; I am not conscious of having done so.

437. I do not gather that the letter which is put to you by my friend purports to have been received by you?—I have no recollection of it whatever.

Mr. ELDON BANKES: It was a letter written to "The Times"—published in "The Times" of December 20th.

438. Mr. F. E. SMITH: What Mr. Garvin's letter says is: "The publishers' advertisements flood the columns of 'The Outlook.' It was conveyed to me that unless my paper came into line with the greater part of the Press and condemned 'The Times,' the advertisements were unlikely to return." Had you written about that to Mr. Garvin?—No. I tell you I had forgotten the letter, I had forgotten the circumstance, I knew nothing at all about it until Mr. Banks mentioned it now.

439. We need not probably enter into the merits of that. I want to ask you on a somewhat different point. You have been asked whether "The Times" did not review your books quite properly during the whole of this book war, and you replied that the reviews were admirable in "The Times"?—Yes.

440. My friend asked you whether you did not gain all the advantage from "The Times" and refuse to give them any advantage. Taking the case of a book like "The Queen's Life," is it an advantage to the interest of a literary review or a disadvantage that they should have an advance copy to review?—Of course it is an immense advantage to the reviewer to have an advance copy so that he may review a book at leisure. As regards the advantage to be derived from "The Times," I fully admit that it is great, but I think they do all they can to counteract the advantage to be derived by me by telling their readers in the note to be careful not to buy the book.

441. Is it a good thing or a bad thing for a literary paper to have a review of a book so widely discussed as "The Queen's Letters"?—Of course I should say it is an enormous advantage to them to have a well thought and carefully written review rather than one that is hurried through. It is certainly an advantage to have a good review of a book like that.

442. You have told us that when you put this advertisement in the form in which you did put it in "The Times" you thought it was a good joke. In point of fact I think you paid for your joke. You paid for the advertisement?—I paid for it.

Mr. Justice DARLING: I thought he said that some one on the staff of "The Times," he believed Mr. Moberly Bell, wrote and said that he should put it in because he thought it was a joke, but he should put it in because he thought it would do him so much harm. Those are really the best jokes, those that do people harm.

Mr. F. E. SMITH: This must have been a very humorous review. I want to ask you a question or

two very shortly as to the origin of this war and the part that you have played in it. I will not do it at length. I think before 1900 publishers, including yourselves, were issuing books at the specified price ?

Mr. ELDON BANKES : How far does this arise out of my cross-examination ? I think my friend Mr. Lush, in opening his case, said that the merits of this book war were not in issue in the action, and I have accepted that. Of course, it is quite a different matter to point out the part which Mr. Murray personally takes. My friend now is going into the merits of it. If that is so I must have an opportunity of cross-examining.

Mr. F. E. SMITH : May I say this before I ask the question ? Your Lordship recollects in examining Mr. Murray in chief I did not attempt to take him in any detail through "The Times" war, but, with submission, Mr. Murray has been asked whether he did not use certain strong language with reference to "The Times" and the part they played in this war. I submit it is material to know what the nature of the dispute between "The Times" and Mr. Murray and the other publishers was.

Mr. Justice DARLING : So long as you confine it somewhat strictly, which I must see you do ; but you cannot go into the general merits of the book war—that would be quite impossible. So long as he himself was reproached for doing anything or striking any blow in the course of that war any evidence that you can give as to why he struck that blow I think is right.

443. Mr. F. E. SMITH : Down to 1900 all publishers were issuing their books at a specified price, and book-sellers were free to sell to customers on their own terms ?—Yes.

444. Did difficulties arise later with reference to the discount that was taken from the publishers' price ?—And the competitive discount given among others.

Mr. ELDON BANKES : Mr. Murray has said all this in-chief.

Mr. Justice DARLING: This is a sort of prefatory remark.

445. Mr. F. E. SMITH: I think on the 1st January 1900 a change was made in the practice?—Yes.

446. What was the change that was made?—The change was the result of long negotiations, extending over more than a year—at any rate, over many months: the booksellers then having amalgamated themselves into a body, we agreed to meet their wishes by issuing net books—that is, that the book should be advertised at the price at which it was actually sold to the public. It was a general agreement that, wherever possible, the price of the book should be lowered, so that that which, for example, would have been a 12s. book with the discount, should be sold net at 9s., and the public would be put to a very small degree of loss, but the bookseller would have this satisfaction, that he would know his rival round the corner was not selling for 9d. a 1s. book.

447. In 1905 the managers of "The Times" instituted the Book Club, and you have seen the first prospectus. This passage occurred in it.

Mr. ELDON BANKES: I really object to this.

Mr. Justice DARLING: I think this is going rather far. It is more like the course of the Peloponnesian War.

Mr. F. E. SMITH: If your Lordship pleases.

448. At any rate, Mr. Murray, after the formation of "The Times" Book Club, how did the development of their operations affect your net price system?—Of course there was an honourable understanding. Obviously, if you prevent a man selling a book at less than a net price it is a clear understanding that you do not want him to run a paper-knife through it and call it a second-hand book and sell it for much less. Therefore there had been an honourable understanding when this net agreement was made that books should not be sold second-hand at an early date. It is exceedingly difficult to say when a book is dead and has ceased to sell, but we said it is a shame that copies of a new book should

be sold second-hand directly after it is published. "The Times" had signed the net-book agreement, but they would not listen to the proposal of a close time.

Mr. ELDON BANKES: Six months?

449. Mr. F. E. SMITH: They wanted to sell books which you say were practically new within six months?—Yes. They announce in their prospectus that the book is practically as good as new.

Mr. F. E. SMITH: I submit I may now put the passage from the prospectus as to this period of six months. It is the prospectus of the Defendants.

Mr. Justice DARLING: I do not see the object of it.

Mr. F. E. SMITH: The object of it is to show that Mr. Murray's language, which has been commented upon in cross-examination, was justified by an attempt to sell new books within this period of six months.

Mr. Justice DARLING: What language did he use which has so shocked you?

Mr. F. E. SMITH: I myself was not shocked, but Mr. Bankes was putting it forward.

Mr. ELDON BANKES: It was not put for that purpose.

Mr. Justice DARLING: It is perfectly obvious that a publisher might object and an author might object to his book immediately it was published being sold at a kind of price at which you could buy it a year or even six months afterwards.

Mr. F. E. SMITH: I will not pursue it any further. I appreciate that.

450. At any rate you tell me that you have 847 volumes, have you not?—Mr. Bankes said 877.

Mr. ELDON BANKES: No; he admits 200 of those have been sold.

451. Mr. F. E. SMITH: Of the 877, or whatever the precise figures are, how many do you say have been sold now?—It is rather in excess of the figure, but I will accept this as the total, that 9,351 have gone altogether up to this date, and if you deduct the presentation copies—I will accept that as a sale—it is rather over the

figure, but it is near enough. It is rather over the figures sold, because some of these copies are in the agents' hands.

452. How many does that leave you now?—If you deduct from 9,351 the number presented?

453. Mr. ELDON BANKES: 158 presentation copies have come out, and the difference is between the total Mr. Murray gave and the figure he gave us?—I consider they remain in agents' hands. Some would remain in my office, but I will accept the figure for the sake of argument.

454. Mr. F. E. SMITH: What effect has this six-months system of "The Times" had on their sale?—The sale of the work has gone down to nothing.

Mr. Justice DARLING: What is the six months?

Mr. ELDON BANKES: The six months is their time.

Mr. MONTAGUE LUSH: Therefore the value of these books is diminished. That is the point.

Mr. Justice DARLING: The Plaintiff's point is this, that if "The Times" had not written what it did, even all those 877 would have been sold, and probably would have been sold within the six months. If they had gone within six months they would have gone at the original price. I have not got Mr. Murray's estimate of how many he thinks are left.

455. Mr. F. E. SMITH: How many have you got on hand now?—I have got the remainder.

456. Mr. ELDON BANKES: How many has he got on hand of the 10,200?—Of the 10,200 I have got on hand 865, and then I have the whole of the reprint of 2,020.

457. You cannot have 865—

Mr. Justice DARLING: I thought he brought it down to 877 at a certain date, and since that date a certain number have gone. What I want to know is how many have gone since that date out of the 877?

Mr. ELDON BANKES: 100.

Mr. F. E. SMITH: Is that right that 100 have gone out of the 877 since that date?

458. Mr. ELDON BANKES: Will you give us the

figures again?—I make it out according to that that I have 865 of the first 10,200 left.

459. But then there are 158 presentation copies?—I beg your pardon, it is 765.

460. Mr. ELDON BANKES: That is 765.

A JUROR: Out of the first 10,000?

Mr. ELDON BANKES: Yes. We are not dealing with the reprint.

461. Mr. Justice DARLING: 765 out of the 877.

A JUROR: Then there are 2,020 besides that.

Mr. ELDON BANKES: They have not been touched.

462. Mr. F. E. SMITH: I am reminded with regard to these 2,020; those are printed?—They are printed, not bound.

463. You have paid for the printing?—Yes.

464. And the illustrations are paid for?—I have paid for more than those illustrations, because it is more expensive to work 2,000 illustrations than, we will say, 3,000. 3,000 is the smallest number in which there is a large advantage, and when I was printing 2,000, feeling sure that I should want more than that 2,000, I printed 3,000 illustrations.

465. That expense you have gone to, and those copies have not been touched?—No.

Mr. F. E. SMITH: If your Lordship will look at page 17 of the transcript, your Lordship will see, about ten lines down, my friend Mr. Lush said: "If I might hand to your Lordship the original letter of Mr. Moberly Bell and this interpolation, I think your Lordship will see." Then your Lordship says: "You mean that you are dealing with a question of writing." Then Sir Edward Carson says: "There is no question that Mr. Bell wrote that part. (Mr. Montague Lush.) I have got the shorthand note of what was said in the Court of Appeal. (Mr. Justice Darling.) Now you have said you want to know who wrote the literary criticism? (Sir Edward Carson.) He is in Mr. Murray's employment. He is an assistant. (Mr. Montague Lush.) Is my friend instructed to say that, because that may be

added to the list of misstatements." I did not happen to be here, and I took Mr. Murray in-chief, and I omitted to ask him a question on this point. Perhaps your Lordship will allow me to put it now ?

Mr. Justice DARLING : It is only an interjection of Sir Edward Carson's.

Mr. MONTAGUE LUSH : We do not want it to go forth that there is any truth in it.

Mr. ELDON BANKES : I ought to have asked Mr. Murray that question.

Mr. F. E. SMITH : Perhaps my friend will take it.

Mr. Justice DARLING : Will you finish your re-examination except with regard to that which is entirely new matter.

466. Mr. F. E. SMITH : I want to ask you, as we have been discussing your accounts and your books : I think you made a full disclosure of all your books to the Defendants in this action ?—Yes.

467. Further than that, you had a special account prepared showing the expenses, and so forth, of the production of this book ?—Yes.

468. For convenience ?—Yes.

469. About this cost per volume, I am not sure that it is not clear, but I ought to ask you once more about it. Will you tell us how much your profit per copy on these volumes was ?—I took the figures themselves, and they approximate, I think, very closely to Mr. Bankes' figures. I take 10,000 at £20,813, and I deduct from that £7,060 for cost of production.

470. Does that include the amanuenses and the advertisements ?—Yes, including the amanuenses and the advertisements. That is the total cost ; that produces a balance of £13,753, or £1 7s. 6d. per copy profit. Then you have to deduct from that the authors' two-thirds share, deducting £9,168 13s. 4d. I am making a comparison with "The Times" statement, because they take the cost of the book. They take £2,000 for the editor, which is a totally inaccurate figure. They take it in making their estimate.

471. Mr. Justice DARLING : Never mind their mistakes. Let us have the real thing ?—If you deduct £9,168 13s. 4d. from £13,753, that leaves a balance of my gross profit.

472. Mr. ELDON BANKES : What was the figure you gave for the authors' share ?—£9,168 13s. 4d. That is two-thirds of £13,753.

473. That they actually got ?—I am only assuming 10,000 were actually sold.

474. Mr. Justice DARLING : What is your gross profit ? Let us have the exact figure ?—£4,585 16s. 8d., or 9s. 2d. per copy. Then from that £4,585 gross profit I have to deduct my business expenses, which, as you know, I estimate at  $16\frac{2}{3}$  per cent. of the turnover of £20,813.

475. That gives you a deductible figure of what ?— Of £1,107 4s. 8d., or 2s.  $3\frac{1}{2}$ d. per copy.

476. That is your net profit, 2s.  $3\frac{1}{2}$ d. per copy ?— That is the clear profit I gave.

477. That is on the whole sale of 10,000 ?—That is supposing the whole 10,000 were sold clear out.

Mr. Justice DARLING : 2s.  $3\frac{1}{2}$ d. per copy of three volumes ?

Mr. ELDON BANKES : Yes, per set.

Mr. Justice DARLING : If the whole edition sold at the published price ?

Mr. F. E. SMITH : Yes, my Lord.

Mr. ELDON BANKES : No, not at the published price: These figures, your Lordship will see, include all the copies sold at even as low as £1 10s. 6d.

478. I ought to have asked one question of you because I want to know. Do you in fact know who the reviewer of the book was ?—His name was on the paper yesterday.

479. Mr. Bailey ?—Yes.

Mr. Justice DARLING : There are several. What Mr. Bailey ?

Mr. ELDON BANKES : Mr. John C. Bailey.

480. Mr. Bailey was a proper person to select, was

he not, to review the book?—Admirable; he could not have been better.

481. And a person who has not any ill-feeling towards you?—I did not know Mr. Bailey at the time, but I have made his acquaintance since, and I agree with all you say about him.

482. I mean he is quite a right person to select as a reviewer?—Yes.

483. If you wanted a fair, impartial, and competent review?—No one to whom I would sooner turn.

Mr. Justice DARLING: Does he not edit "The Quarterly Review"?

484. Mr. ELDON BANKES: He is at present acting as editor?—May I explain the position? Dr. George Prothero is editor of "The Quarterly Review," and last year, unfortunately, his health broke down, and he was ordered to take a long voyage. He came to me a short time before Christmas—I would not trust my memory as to the date, but it was somewhere about November or December. He said, "I must go, however much I regret it." He said: "I want to ask you to allow my friend John Bailey to do the work for me while I am away." I did not know Mr. Bailey then, but I said I would gladly accept any friend of Dr. Prothero's that he recommended. Mr. Bailey is in no sense my employee because he is acting for Dr. Prothero, and any honorarium which may pass passes between him and Dr. Prothero—

485. Never mind about that. You had nothing to do with writing this review?—I did not know at the time the review was written, and it had no effect whatsoever.

Mr. ELDON BANKES: You agree with that, that he was perfectly impartial.

Mr. Justice DARLING: What was said yesterday by Counsel for "The Times" was that he was in Mr. Murray's employment.

Mr. ELDON BANKES: That was only an interjection by my learned friend.

Mr. Justice DARLING: It has all been cleared up.

Mr. ALFRED INGLE, sworn  
Examined by Mr. F. E. SMITH

486. I think you are clerk to Mr. Midgley, chartered accountant, carrying on business at Leeds?—Yes, that is so.

487. Have you checked the figures making up the establishment charges in the Plaintiff's establishment for the year ending June 30th, 1907, in accordance with the balance-sheet?—Yes, that is so.

488. What does that amount to on the sales?— $16\frac{1}{2}$  per cent. on the sales for the year.

489. That is before making any provision for discounts on sales, bad debts, or costs of advertising?—Yes.

490. Have you also ascertained the expenses for the three years prior to 1907 upon the same basis?—Yes.

491. June 30th, 1904, 1905, and 1906. What do you find the average rate per cent. in those years?—Slightly in excess of the year 1907. It is a trifle under 17 per cent. on the sales.

492. Taking the four years' average, the result would be substantially the same?—Substantially the same.

Cross-examined by Mr. ELDON BANKES

493. When were you asked to look into this question?—Just a year ago.

494. Have you looked into the books for any other purpose?—A year ago my employer was called in to get out particulars of the expenses for a comparison for years back, and I did so to the best of my ability at that time. For the last half year, the year 1907, I was able to check the figures.

495. You have never been asked to look into the books for any other purpose except to find the percentage the establishment charges bear?—Yes, except in 1907, when I should get the full balance-sheet.

496. Is your employer a gentleman who is employed by Mr. Murray to audit his books?—Yes; from last year only. I only commenced a year ago on that work.

497. Have you any experience of publishers' accounts and the way publishers keep their accounts?—Not much, except in connection with Mr. Murray's business.

498. That is the only publisher's business whose accounts you audit?—I have some time ago, but only to a slight extent.

499. How does Mr. Murray deal with plant? Is the plant kept as part of the capital expenditure?—There is no value whatever taken for the plant. What is paid for plant is dead and gone.

500. He treats it as dead and gone?—Yes.

501. Although you realise it may be a valuable asset?—There is a possibility of that, but in some cases of course it is very remote.

502. Have you looked into the matter to this extent, to know how much Mr. Murray has realised from the plant in this particular case?—No; I have had nothing whatever to do with the figures in connection with this particular book.

Mr. Justice DARLING: What do you call "plant," Mr. Bankes?

Mr. ELDON BANKES: We call "plant" fixed charges which are utilised for the purpose of bringing out a second edition; we will say the plates, for instance; of course the paper, the printing, and the binding—the expense of that is completely wiped out.

Mr. Justice DARLING: Practically it is the plates and nothing else.

Mr. ELDON BANKES: No, my Lord, there would be the expense of making the plates.

Mr. Justice DARLING: The plate is the plate.

Mr. ELDON BANKES: In addition to the plates, there is the work of the amanuenses, for instance.

Mr. Justice DARLING: That we have dealt with.

## EXAMINATION OF

Mr. ELDON BANKES : It has been debited by them.

Mr. Justice DARLING : When you say the plant, are you alluding to anything. A publisher's business is not like every other business ; in some businesses there is a whole lot of fixed plant which serves over and over again.

Mr. ELDON BANKES : Yes, I think the two main items would be the plates and, in this case, the charge for the amanuenses. I think I must put those two as the two chief heads.

Mr. MONTAGUE LUSH : I do not know if I might ask whether my friend accepts the statement I made yesterday, that Mr. Ross wrote the second "Artifex" letter. It might save me bringing a witness up from Tonbridge. I am going to call evidence to prove that it was Mr. Ross. If you accept my statement I need not trouble to bring the witness.

Mr. ELDON BANKES : I will not dispute it if my friend will admit that Mr. Ross wrote both ; he did, in fact, write both.

Mr. Justice DARLING : Nothing must be admitted but what is perfectly true. I was told yesterday that Mr. Hooper wrote it.

Mr. MONTAGUE LUSH : Mr. Hooper's name is on the document.

Mr. ELDON BANKES : Mr. Ross's was the hand that wrote it ; he wrote it for Mr. Hooper, and Mr. Hooper sent it to the editor of "The Times."

Mr. MONTAGUE LUSH : I must ask my friend to prove that, because the *prima facie* evidence is that Mr. Hooper wrote it.

Mr. ELDON BANKES : I certainly will prove it ; but if I admit that Mr. Ross wrote the second it must be taken that he wrote the first too.

Mr. Justice DARLING : He may have written in different capacities ?

Mr. ELDON BANKES : He wrote both in the same capacity, for Mr. Hooper.

Mr. MONTAGUE LUSH : To save expense and trouble,

I will ask my friend to meet me. I will not call him at present, but if necessary, I will.

Mr. Justice DARLING : Is it the fact that both Mr. Hooper and Mr. Ross are on the staff of "The Times" ?

Mr. ELDON BANKES : Mr. Ross is on the staff of "The Times," and Mr. Hooper is the manager of the Book Club. There are a great many more, but you asked me a question and I answered it. I am not in the least dissociating "The Times" from the Book Club, but the gentlemen who manage the Book Club are not on the staff of "The Times." That is the fact.

Mr. YOUNG, sworn

Examined by Mr. MONTAGUE LUSH

503. You are a member of the firm of Messrs. Henry Young & Sons, of South Castle Street, Liverpool ?—That is so : we have two places.

504. I think you have had 32 years' experience ?—33 years this year in the book trade.

505. Mr. Justice DARLING : As bookseller or publisher? —We are booksellers principally, but we do publish books. They are mostly books of local interest ; but we are both.

506. Mr. MONTAGUE LUSH : Did you see and read the review of "The Queen's Letters" in the Literary Supplement of "The Times" ?—I did on the day "The Times" had it. I have bought "The Times" every day for 25 years.

507. I am glad to hear it. I will ask you why you take so much interest in it ?—I have always been brought up to read "The Times." My father read it before me. I will tell you exactly why I read "The Times."

508. We all want to know ?—"The Times" has reports of all the book sales in London. We deal in rare books and in valuable mezzotints, and "The Times" is the only paper that we can get that information from, and, apart from that, it is the paper that most of our

customers read, or at least a number of our customers read it, and I consider it has more influence with probable book buyers, I should say, than any paper except "The Athenæum" or perhaps "The Spectator," but certainly "The Athenæum." For certain books, such as biography and what I may call society books, I think it has the more influence.

509. Take "The Queen's Letters," for instance : is that a book the sale of which would be influenced by "The Times" ?—Very largely indeed. I have known—not lately, but I have known when I came out to business—a good review in "The Times" to sell an entire edition. I will give the name of the book if you like. It has not that influence now.

510. Some day, but I will not trouble you now. I will get more information later on.

511. Will you tell me, before you had seen the review of "The Queen's Letters" had you any copies of the book for sale ?—Certainly ; before I saw the review of the book I had 39 copies of the book for sale, and I sold them. I cannot give you the precise date, but I sold them pretty nearly all out and had to repeat my order.

512. I will just put the question to you : before the review came out and began to come into circulation, had the book sold well or not ?—Very well.

Mr. ELDON BANKES : I do not know my friend's object in asking these questions ; there is no complaint here about the review.

Mr. Justice DARLING : You mean to come to a point after the "Artifex" letter. The review contains an allusion to the price, therefore I cannot say that that would be immaterial.

513. Mr. MONTAGUE LUSH : Did you read the later statement in the letter of "Artifex" in "The Times" which is the subject of the action now ?—Certainly, but I will not admit that the interpolation in "The Times" did not injure the sale of the book. The interpolation did injure the sale of the book.

514. After the "Artifex" letter appeared in "The

Times," and you told us you read it, what experience had you then as to the sale of the book?—I had complaints at once.

515. Mr. ELDON BANKES: Were they in writing or not?—No; verbal complaints.

516. Mr. MONTAGUE LUSH: Tell me in a word what you mean by "complaints"?—I was accused of being a party to the plunder, one person told me, and I was accused of being a party to the Book Trust, and the book was said to be dear. I had none of these complaints before that review and before those letters appeared, but I had complaint after complaint. I do not mean there were a string of people complaining, but I had complaints every day or every other day.

517. From your experience of the sale of the book and of this review and of the letter, what do you say? Was the sale of the book in your judgment influenced or not by what appeared in "The Times"?—The sale of the book was very much injured in my opinion. Thinking is not evidence, but I put it how many copies I think would have been sold, and I have stated under the mark, and I want to be fair.

518. Tell us from your experience—you have had 33 years of it—what do you consider would have been approximately the sale of this book if this letter had never been written?

Mr. ELDON BANKES: Do you mean by him?

519. Mr. MONTAGUE LUSH: Yes, by you?—That is a matter that requires a little thinking about, but I will tell you that I sold 500 copies of Mr. Gladstone's Life.

520. Mr. ELDON BANKES: Please, I object to that?—Then I will leave that out.

521. Mr. ELDON BANKES: Mr. Gladstone's Life was particularly dear to Liverpool?—Excuse me, Liverpool is a Conservative place.

522. He was a native of Liverpool?—He was; we are very proud of him, though we do not agree with him all the same.

Mr. ELDON BANKES : I must object to this.

Mr. Justice DARLING : If he tells us what he thinks he would have sold and why he thinks he could not sell more, that would be evidence that would not expose him to cross-examination.

The WITNESS : I said in my proof that I would have sold 50 copies. I think I would have sold 100, but I want to be fair, and I have stated the lowest I think Mr. Murray would have sold of that edition. He would not have had that 800 copies, they would have been in the air, they would have been on the purchasers' shelves.

523. Mr. MONTAGUE LUSH : On dry land ?—Yes.

524. Is the Christmas season a good time for selling ?—It is a very good time for such a book as this. We are at our business during the Christmas month—that is, the whole of December,—from 8 o'clock in the morning until 10 o'clock at night as a rule, and we sell double or three times the number, especially of that class of book, then.

525. Have you sold any since Christmas ?—Since Christmas I have sold two copies.

526. Only two copies ?—Only two copies.

527. What do you attribute that small number to ?—I sold 38 copies until the time that this review appeared, and even with a very busy season, when I should have had double the number of copies I had sold up to that moment, I only sold 28 copies during the whole of the Christmas season, and after Christmas only two copies up to date.

528. What do you say yourself, now that six months has gone, so that booksellers may compete as much as they like ? Is it as easy now to sell the volumes as it was before ?—No, I have already been told half a dozen times that "The Times" is offering the book for—

529. You must not tell us what others have told you ?—It will injure the sale very much indeed. It will be very difficult to sell it.

530. I daresay you have been in court. Have you considered at all the cost of producing a book of this kind? You have sold the book, so that you know something about it?—Oh yes, and I have read part of it, and I know it would be a very expensive book to produce.

531. Mr. ELDON BANKES: Does he know anything about the cost of producing?—I have published one book at a guinea, but I have never produced one at three guineas, but judging of the one I produced at one guinea “*The Times*” estimate is an absurd estimate. It accuses Mr. Murray of not buying in the cheapest market. He bought in the best market. To have produced the letters of the Queen in a cheap form or an unworthy form would have been absolutely disastrous.

532. Mr. MONTAGUE LUSH: That you say with your long experience?—I say that from my own experience.

533. Do the travellers of Mr. Murray call upon you in the ordinary course?—Yes, Mr. Rice comes to see me regularly.

534. About Christmas time did Mr. Murray's traveller come with a view to getting orders?—Yes, he called shortly before Christmas and I complained to him—

535. You must not tell us what you said. As a matter of fact did you give him the same orders that you would have given him if this had not appeared?—No; I only ordered two copies, but he at his own risk—

Mr. ELDON BANKES: No, please.

Mr. Justice DARLING: You must not tell us that.

536. Mr. MONTAGUE LUSH: Keep only to what was done unless I ask you. I am going to ask you just to take in your hand a print of this letter of “*Artifex*”?—I have it here.

537. Let me direct your attention to the last paragraph of it, the one that begins: “It is not certain that he will be very successful.” The writer says this: “People who have waited so long for the letters of Queen Victoria will be disposed to wait a little longer for the cheap edition which, according to precedent,

will follow upon the heels of the dear one. 'The Memoirs of Prince Hohenlohe' were brought out at 2*4s.* in 1906, and at 6*s.* in 1907"?—That is an absolute untruth.

538. You know that?—Absolutely. Prince Hohenlohe's Memoirs have never been published except at the one price, at 2*4s.*

539. That you are quite definite upon?—Absolutely certain. Here is the publisher's letter to me.

540. You need not produce that unless my friend asks you. Now let me take the next statement: "Captain Scott's 'Voyage of the *Discovery*' cost 4*2s.* net in the edition of 1905, and 10*s.* net in that of 1906." Was there a 1906 edition of the "Voyage of the *Discovery*"?—Yes, but not the same as the previous edition.

541. Just explain that?—The previous edition was in large print—a very handsome book.

542. Mr. ELDON BANKES: Nobody says it is the same?—The first edition had 260 illustrations in it, and the last edition had only 13, and was on small paper. It was not a complete book, in fact.

543. Mr. MONTAGUE LUSH: Could you compare the one edition with the other at all, and say it was the same thing selling at a cheaper price?—I would not think of doing so. I say it was a gross misstatement.

544. I do not know whether you can tell me anything about Sir Evelyn Wood's book that he mentioned, "From Midshipman to Field-Marshall"?—That is practically the same. It contains one less illustration, but it is practically the same book.

545. Henry Irving's Life?—I believe that is the same, too. I have not collated it actually, but I believe that is exactly the same.

546. I am not sure that Mr. Murray has told us. If I forget to ask him you can tell us. Did Mr. Murray produce any one of these books referred to in this last paragraph?—No, Mr. Murray has never published these books.

Mr. ELDON BANKES: Nor was it suggested.

Mr. MONTAGUE LUSH : That is for the Jury. I suggest that is what the document means.

547. Did you expect a large sale of this work ?—I did expect a large sale for it. It is a most important book.

548. Did you in expectation of a large sale issue a special illustrated catalogue of presentation books for Christmas with a reference to and also an illustration of "The Letters of Queen Victoria" ?—I did, and I did that—I put the illustration outside the cover of the catalogue in order that everybody would see it, even if they did not open the catalogue, because the book was not selling as well as I should have liked it to have sold.

549. I will hand it to you in a moment. There is a copy, I think, of an illustration of a well-known portrait of the late Queen ?—It is a rare portrait of the late Queen when she was a girl.

550. A girl of 11 ?—11, I think.

551. Mr. Justice DARLING : Was that taken from the book ?—No ; that was a rare portrait, and we thought it would draw special attention to the book.

552. Mr. MONTAGUE LUSH : Your expectations, you tell us, were greatly disappointed ?—They were greatly disappointed. I wish to say while I am under oath and you refer to the matter that the note that the publisher puts saying that there is a Book Trust is an absolute untruth.

Mr. ELDON BANKES : I object.

Mr. Justice DARLING : What is he alluding to ?

Mr. MONTAGUE LUSH : I gather it was with reference to what your Lordship said yesterday as to the note at the end of the review. Your Lordship said "The Times" put it to all their reviews.

Mr. Justice DARLING : I remember the note at the end of the review about the publishers declining to supply. I said they put it, not at the end of all, but I said they put it at the end of certain notices which appeared in the same newspaper.

Mr. MONTAGUE LUSH : I thought your Lordship rather inferred that it was a habit to do that.

Mr. ELDON BANKES : Yes, it is their habit.

Mr. Justice DARLING : I rather said they put it at the end of this notice, and at the end of a notice of a book about the Matterhorn and at the end of the notice about the life of the salmon.

The WITNESS : My point is that there is no such thing as a Publishers' Trust, and it is an absolute untruth.

Mr. Justice DARLING : The thing they put is this : "The publishers of this book decline to supply 'The Times' Book Club with copies on ordinary trade terms, and subscribers who would co-operate with 'The Times' to defeat the Publishers' Trust may effectively do so by refraining from ordering the book so far as possible until it is included in 'The Times' monthly catalogue." I mentioned that they put that at the end of certain other notices in this paper because I think there was an objection that "The Times" purposely put it at the end of this one notice. I called attention for that reason.

Mr. MONTAGUE LUSH : I quite appreciate that.

553. Is there any such thing as the Publishers' Trust ?—I say here, under oath, that it is absolutely false to say so. There is no such thing as a Publishers' Trust. There is a Publishers' Association, like there is a Law Association. Anybody can belong to it, and Mr. Murray could have published that book at three guineas or 3s., whichever he liked. All it says is, if you do publish a book at a net price, whether it be 6d. or £5, you shall maintain that price for six months to protect the booksellers.

554. In other words, the publisher is not violating any bargain or arrangement he has made if he publishes at any price he likes ?—At any price he likes. I need not buy from him or push his books generally. All I have to do is to maintain the price for six months, and it was because "The Times" refused to do this—

555. We know that. For whose benefit, the publishers' or the booksellers', was the six-months rule

passed?—It was entirely for our benefit. We are being ruined.

556. As booksellers or publishers?—As booksellers.

Mr. Justice DARLING: I should have hoped there would be some slight benefit remaining over.

557. Mr. MONTAGUE LUSH: Their interests are necessarily allied?—The principal bookseller in Liverpool, Mr. Adam Holden, was ruined.

Mr. ELDON BANKES: We cannot go into this.

Mr. Justice DARLING: Everybody said we would not go into the results of the book war, therefore we must not count the corpses.

Cross-examined by Mr. ELDON BANKES

558. Are you an advocate as well as a bookseller?—I would be very sorry to be one.

559. Do you think you have been acting as an advocate in the witness box or not?—No; I have been acting as a witness. I am under oath.

560. You come from Liverpool, I understand?—I do, a most important place.

561. Are you a member of the Booksellers' Association?—I am.

562. And of course the Booksellers' Association has taken a very active part in this book war?—Most distinctly, to protect themselves.

563. And the Booksellers' Association and the Publishers' Association have been acting together in this matter against "The Times"?—The Publishers' Association acted at our instigation in it because we were being ruined.

564. They acted at your own instigation, but you and they act together?—Not necessarily; but they may take our view or they may not. In this case, I am glad to say, they did take it.

565. You have been acting altogether in this book war against "The Times"?—No, "The Times" has been acting against us. We did not commence it.

566. They have been acting against you, and you have been taking the other side actively?—We have been defending ourselves brilliantly.

567. Are you a prominent member of the Booksellers' Association?—I am on the Council of the Northern Branch.

568. So I thought?—I consider it an honour.

569. Have you a large business in Liverpool?—Yes; I have one of the largest in the North of England.

570. And as a matter of fact you always issue a Christmas catalogue, do you not?—We do.

571. Do you always put something on the outside of the envelope?—Certainly.

572. And on the outside of the envelope you put the thing which at the moment you think will be the most attractive?—Generally speaking. I say in this instance I wanted to put one of my own books that we had there published, and I gave that prominence to the Queen's letters because it was not selling as I should have liked.

573. Was there anything more attractive?—More important to me, certainly.

574. I asked you whether you put anything that was attractive on your envelope. Had you anything more attractive in your stock at the moment than that particular illustration which you selected to put on your envelope?—Certainly; that was only put on in consideration with my partner and because the book was not selling as we thought it should after some months life. I wanted to put an illustration from a book of our own.

575. Your partner thought you had better not?—No; my partner agrees with me.

576. You convinced your partner?—As I hope I shall convince you.

577. In that case you acted as advocate?—No; we are a loving couple.

578. With regard to this particular book, did you subscribe for copies?—Yes.

579. Can you tell me how many you subscribed for?—38.

580. I suppose under those circumstances you got 25 for 24?—Yes, and even 7 for 6 $\frac{3}{4}$ , which I do not think even Mr. Murray knows about.

581. I suppose you know pretty well, do you not, the demand for such a book as this at Liverpool?—I have the feel of the market better than you would have.

582. You might easily have that. I suppose it is the fact that the demand for a three-guinea book in Liverpool is limited?—No; I would not admit that at all, nor even a 20-guinea book.

583. Do you know any other book of the same kind?—I happen to have anticipated that you would ask me that question, and I have got a list of some.

584. May I ask this? Did you prime yourself with this material having considered the questions that might be put to you for consideration?—I considered it wise to show that Liverpool does buy expensive books. Let me tell you what it does buy. I sold 25 copies of Hakluyt's Voyages at £7 10s. per set. I am under oath.

585. I am not saying that you are not?—Gardner's "Oliver Cromwell," three guineas, 70 copies. Mr. Gladstone's Life, 500 copies.

586. You said that was not appreciated in Liverpool?—No; I said Liverpool was Conservative, but we are all very proud of Mr. Gladstone.

587. What was Gladstone's Life published at?—Two guineas net—not as expensive a book with regard to get up as this—not nearly as expensive, but well worth two guineas. All Robert Louis Stevenson's works published at 10 guineas I have sold up to 52 sets. "The Life of Queen Victoria," by Holmes, I have sold 26 copies.

588. You gave me an instance of Stevenson at 10 guineas. How many volumes?—Stevenson is in 20 volumes.

589. I am asking you for a list. I assumed that you

were arming yourself with instances of three volumes at three guineas ?—No, that is not the question you asked me. You asked me whether I sold expensive books in Liverpool.

590. Your answer might be misleading ?—No, it was this that would be misleading.

591. I asked you whether you would give me instances of a book of this kind, by which I meant a book of three volumes published at three guineas ?—I give you one Life at three guineas, “The Life of Queen Victoria” by Mr. Holmes, the librarian, not in three volumes but in one volume.

592. Mr. F. E. SMITH : Did you say three guineas ?—One volume for three guineas. I have sold 33 copies.

593. Mr. ELDON BANKES : How many volumes are there of this Life of Queen Victoria (Producing a book) ?—Not this one.

594. This is what Mr. Smith gave me ?—The one I spoke of is in one volume of the size of the volume you have in your hand. I sold 26 copies at three guineas and six copies at eight guineas.

595. That was a book written by Mr. Holmes ?—Yes.

596. What was it published at ?—At three guineas for one volume.

597. I am still asking you, and perhaps you can give me an answer, can you give an instance of the books published in three volumes at three guineas ?—That is a difficult question. I wish I had anticipated that and I would have got ready for it, but I cannot say. It is an impossible thing for me to think of the book at the moment. Take your instance nearest to it.

598. I do not want nearest ?—I cannot give it to you.

599. Mr. Justice DARLING : Why not the nearest—it may be very near ?—The nearest I can give to-day is a similar kind of book, and to make a fair comparison I suppose it would not be fair to take Stephen’s Commentaries on the Law of England. There are four volumes at four guineas.

600. Mr. ELDON BANKES : Law books are always dear.

You cannot fairly compare a law book with this?—I fairly could not. Gladstone's Life, I think, is a fair comparison.

601. How many volumes are there in the Life of Gladstone?—It is three volumes for two guineas, but not nearly so expensive.

602. Mr. Justice DARLING: I think you sold 500 copies?—Yes, and I keep it in stock.

603. There was the Life of another statesman—Lord Randolph Churchill—in I do not know how many volumes?—That was only two volumes, and it was killed, shall I say, by the Book Club.

Mr. Justice DARLING: I am very sorry I introduced it.

604. Mr. ELDON BANKES: I suppose that if you subscribe for sets you get an advantage, do you not, in price?—I have no advantage in subscribing beyond what I get—journey terms. I get  $2\frac{1}{2}$  per cent. more if I subscribe. I get  $7\frac{1}{2}$  per cent. for my invoice instead of getting 5. It is only a small amount.

605. So you do get a certain advantage by subscribing?—Certainly.

606. May I put it to you that when you decide as to how many sets you shall subscribe for you have, to the best of your ability, considered the number you are likely to be able to dispose of?—The number I think it wise to commence with.

607. And I suppose you have a certain number of customers who you know are pretty certain?—No; it is a pure speculation on my part. I hope they will, but I do not know at all.

608. You subscribed in the first instance for 38 copies?—That is so.

609. Can you tell the date at all when you subscribed?—No, I could not without a memorandum. I should think soon after Mr. Murray announced it. When I say I could not, I mean I did not attend to it.

610. It was soon after it was announced, and some time before it appeared?—Probably.

611. So that at any rate you had subscribed for that number before there was either a review or a letter of "Artifex's"?—Certainly.

612. Can you tell me when the number you subscribed for were delivered?—I could not tell you the date. I think it was in October—October 16th to 18th—but I have not armed myself on that point.

613. Arming yourself is rather indicative of the language of war?—Yes; you know we are in a war. You know what I mean.

614. You have not armed yourself on that. Have you armed yourself on the point with regard to the date on which you in fact sold them?—No. I should say that I sold them. I repeated my order for a smaller number of copies. I remember exactly my brother and I were frightened about the review, and instead of ordering another 26 copies we only ordered them in 13's, and we decided it was only wise to supply them in 13's.

615. You are not answering my questions. I asked you whether you can give me the date when you disposed of the first 38?—I cannot. We first disposed of them when I ordered them. I think we disposed of the first 38 soon after they were published.

616. Would the 38 run into November?—No. We would sell them; if it was published on October 16th probably I repeated the order on perhaps November 1st for a smaller number.

617. You realise that you came here to suggest to the Jury that the letter of "Artifex" affected the sale?—I did not come to suggest anything. I came to give evidence.

618. Evidence by way of suggestion?—No, I do not suggest anything to the Defendants.

619. Have you not suggested to the Jury that this article affected your sales?—I have given evidence that it did, which is a different thing.

620. In order to test that it is necessary to find out, is it not, the date when you sold these copies, and when

you gave your repeat orders?—I will tell you as near as I can.

621. You have got the actual facts?—I am sorry I did not bring it.

622. You have brought a good deal from Liverpool?—I never thought of bringing that. These are some things I thought it wise to bring. I have brought "The Times" letter, but you must take it from me I am telling the truth, and we sold as many as we could, and we repeated the order for 13 in November, and we followed it with 13.

623. I want to know the dates when you gave those orders?—It is impossible to carry that in my head.

624. How many copies did you sell altogether?—39, and then we sold 26, that is 63, and then we ordered another two, but Mr. Rice took the risk of sending the seven at his risk.

625. You sold 63, as I understand?—And two copies.

626. You sold 65 between October and Christmas?—Between October and Christmas altogether. That is fair. A small sale, I say, for such an important book.

627. May I take it you sold as many after the letter of "Artifex" appeared?—Oh no.

628. As before?—Oh no; the sale fell off at once.

629. We will go by numbers. You ordered 38?—Yes.

630. You had not got rid of all the 38 until November?—Certainly. I got rid of most of them when that article appeared.

631. How many is that against?—I think we had perhaps six copies left.

632. That would be you sold 32 before the article appeared?—That would be so.

633. You sold 65 altogether?—That is so.

634. Am I not correct in saying that you sold more after the article than before?—No.

635. Twice 32 is 64, is it not?—Twice 32 is 64.

636. You sold 65?—65.

637. 32 of them before the article?—I should say about.

638. And 33 after?—Yes, you are right.

639. You told us you had been brought up on “The Times”?—No, I have been brought up to read it.

640. That is perhaps a necessary correction. You also said that everybody understands what a splendid thing it is for a book to get a good review in “The Times”?—I say so now.

641. I suppose you would acknowledge nobody knows that better than the publishers?—Nobody knows that better than anybody dealing in books I should say in England.

642. And you say really that the reason the people send their books to “The Times” to be reviewed is in order to get a good review if they can?—And to benefit the paper.

643. You came to say that?—I say it is a great benefit to the paper to make their paper interesting.

644. And a great benefit to the publisher?—I say so.

645. You have known a case where a book has been made by a review?—Absolutely, and that edition has been sold.

646. It is the practice, is it not, in the book trade, to issue a cheaper edition after the first?—Yes, if it is a popular book. It is not a practice, but a publisher is always glad to do it if he can.

647. I suppose in your experience you have known cases in which Mr. Murray himself has done it?—Yes, he issues as soon as he can, I should say, a cheap edition of a popular book.

648. You criticised something that “Artifex” said about these books, but I want to understand exactly what you mean. “Artifex” says that people who have waited so long for “The Letters of Queen Victoria” will be disposed to wait a little longer for the cheap edition, which, according to precedent, will follow upon the heels of the dear one?—I will not admit that it follows

on the heels, because following on the heels is to follow close after it.

649. With a convenient interval?—It might be a year or two years; it just depends on how the book is selling.

650. You see the writer is speaking there of a cheap edition which follows the dear one?—It follows on the heels.

651. I will leave out the heels for the moment, because you object to that. He is speaking of a cheap edition following the dear one?—Yes.

652. That you admit is according to precedent in the case of a popular book?—In the case of a popular book we expect a cheap edition after some years.

653. This writer says that “The Memoirs of Prince Hohenlohe” were brought out in 1906 at 24s.?—Yes; “Prince Hohenlohe’s Memoirs” were brought out at 24s. in 1906.

654. You say it was not brought out at 6s. in 1907?—I am certain of it.

655. Do you know as a matter of fact that an edition at 6s. was advertised in 1907?—No. I have never seen it.

656. Are you prepared to say it was not advertised?—No, I cannot remember an advertisement.

657. It was announced?—I never saw any such announcement.

Mr. Justice DARLING: Do you mean it was announced and never came out?

658. Mr. ELDON BANKES: Yes, that is the fact?—I have never seen such an announcement.

659. Captain Scott’s “Voyage of the *Discovery*” cost 42s. net in January 1905. That is accurate, is it not?—Yes.

660. And it is accurate, is it not, that a cheap edition was brought out at 10s. in 1906?—No; because that would be an expression that it is the same book. It is only part of the book.

661. It was called the cheap edition?—Possibly, but

it is not the cheap edition. It is not the same book. It is a totally misleading statement.

662. You follow me, what the writer is speaking about is a cheaper edition following the dear one?—He should have said that. He is making the public believe they could get for 10s. what they got for two guineas. That is not true.

663. That is your suggestion?—No, it is what he said.

664. Is it not the fact that according to precedent the cheap edition does not contain all that the dear one contains?—It is not the same book.

665. It is called the second edition or the cheap edition?—It is called the cheap edition or the cheap issue.

666. That is what this person says?—He gives you the impression it is the same book that you get for 10s.

667. A little higher up he says: “People who have waited so long for ‘The Letters of Queen Victoria’ will wait a little longer for the cheap edition”?—I confine myself to this one point: he gives you the impression that you will get “The Voyage of the *Discovery*,” which cost two guineas, for 10s. I say he meant the same book.

668. Is it not possible you may fairly read it so?—No; it seems to me that was put in to give the impression that you could get the same book for 10s., and you cannot.

669. The Jury will be able to say—

Mr. Justice DARLING: This winds up with “The Life of Henry Irving”?—“The Life of Henry Irving” was published in 1906 at 25s. net; the same publisher this year offers the same matter for 6s. net.

670. Mr. ELDON BANKES: It was exactly the same in that case. There the distinction is drawn. I am now going through them. I have taken “The Voyage of the *Discovery*,” “From Midshipman to Field-Marshal,” by Sir Evelyn Wood, cost the early buyer 25s. net in 1906?—I have answered that question; it

is not the same. But the difference is immaterial; there is only one portrait left out.

671. Do you also say the same with regard to "The Life of Sir Henry Irving"?—I have not collated it, but I will accept it.

Re-examined by Mr. F. E. SMITH

672. Just on those two points. When was the small edition of "The Memoirs of Prince Hohenlohe" brought out here?—It has never been published. A small edition of Prince Hohenlohe's Memoirs has never been published.

673. The statement here is that "The Memoirs of Prince Hohenlohe" was brought out at 26s. in 1906, and at 6s. in 1907; that is not accurate?—I know it is absolutely untrue.

674. Whether it was announced or not I do not know. I do not know whether you know?—I have never seen it announced: that is all I can say.

675. I want you to tell me about Scott's "Voyage of the *Discovery*." It is alleged here it cost 42s. net in the edition of 1905, and 10s. net in that of 1906. What do you say about that?—I say it is not the same book; that it gives you the impression that you are going to get exactly the same book for 10s., but by waiting a little longer in that case you would not get the same book. You would get it, less certain illustrations.

676. Was the second cheaper edition in fact published in 1906?—I could not say. I have not got that in my memory.

677. You have been asked about the proportion of your sales before and after the article had appeared, and my friend Mr. Bankes put it to you that you sold 32 before the article appeared and 33 after. How long did it take you to sell the 32 before the libel appeared?—I sold them immediately before the end of the month.

678. If it was before the article appeared it must have been considerably before the end of the month. When

did the libel appear?—The libel appeared on October 19th.

679. And you say these 32 were sold before the libel appeared?—I would not say that.

680. Mr. ELDON BANKES: He said he did not?—I said what I told you, that I sold before the end of November, and I repeated my order.

681. Mr. ELDON BANKES: That was the first 32?—Exactly.

682. Mr. F. E. SMITH: The 33 represent the total number of sales up to date, not counting those 32?—Exactly; that is the total number, because it was the Christmas season. I sell three times the number of books in that month than I do in any other month.

683. That was in spite of special efforts?—In spite of special efforts.

684. Why did you make these special efforts?—First of all I was interested in the book. I thought it was a very important book. We have supplied books for the Royal Library, and because I knew His Majesty the King was interested in it. I do not wish to pose as a philanthropist, because I wanted to make a profit.

685. I think you rather committed yourself by ordering a certain number?—I had previously committed myself.

686. Did you want to have those on your hands?—I say in this instance when that review appeared I was told at once that I was sharing the plunder. It was not called profit. I will not admit I was plundering at all. It was a profit I was making.

687. You had these books on your hands?—Yes, and I was told that according to the article I got twice—

688. Never mind the article; I only wanted to know that you had these books on your hands at the time?

Mr. MONTAGUE LUSH: Might I call the witness whom I mentioned, who has now come?

Mr. GRIFFITHS, sworn

Examined by Mr. MONTAGUE LUSH

689. Where are you living now?—Tonbridge, in Kent.

690. You were for many years reader in the employ of "The Times"?—I was.

691. When did you go to "The Times" office?—It was either in January 1890 or 1891: I am not sure which.

692. When did you leave "The Times"?—March 14th last.

693. That is 12 months ago, or a little less. As a reader, did you examine the proof of "Artifex's" letter in "The Times," the first one?—The first one.

694. Did you have the original read out to you? Did you hold the proof or was it the other way?—I held the proof and my assistant read the copy.

695. We know from the document itself it bore Mr. Hooper's signature at the back?—Yes.

Mr. ELDON BANKES: No; it has got his name at the back.

696. Mr. Justice DARLING: Your assistant read the manuscript?—It was typewritten.

697. Mr. MONTAGUE LUSH: I am told it is not a signature, but his name?—The name of Mr. Hooper.

Mr. ELDON BANKES: I think you have the original. I handed it to you and I have never had it back.

Mr. Justice DARLING: It has not been put in. The only thing I have had of that kind was the manuscript of the review, and that I handed back because it was all in pieces.

Mr. MONTAGUE LUSH: We will have a search made for it.

Mr. Justice DARLING: You may take it it has never been put in. The documents that I have were kept by the officer of the court.

Mr. ELDON BANKES: I handed it to my friend.

698. Mr. MONTAGUE LUSH : We will find it. It is a typewritten thing, with a blue pencil mark on the back ?—Blue pencil.

699. Mr. Justice DARLING : What was in blue pencil on the back ?—The name of Mr. Hooper.

700. Mr. MONTAGUE LUSH : Were you also the reader when the second letter of "Artifex" appeared ?—I remember that letter.

701. Were you reader to "The Times" at that time ?—Yes.

702. Mr. Justice DARLING : You were, do you say ?—I was.

703. Mr. MONTAGUE LUSH : Did you see the proof of the second letter of "Artifex" ?—No, I never saw the proof.

704. Did you see the manuscript ?—What I believe was the manuscript.

705. Just explain to us and tell us how it was you came to see what you believed was the manuscript of "Artifex's" second letter.—

Mr. ELDON BANKES : Has any notice been given to us to produce it ? If you are going to speak about the document we ought to have it.

Mr. Justice DARLING : Where is it ?

Mr. ELDON BANKES : I do not know where it is.

Mr. MONTAGUE LUSH : Then I call for it. I thought my learned friend admitted it was in one sense.

(Document was produced and handed in.)

706. Mr. Justice DARLING : Just look at it. Is that the thing you saw ?—Yes, I think it was.

707. Mr. MONTAGUE LUSH : Do you know the handwriting ?—It is very much like a leader writer's of the name of Ross.

708. You say it is very much like. Is it sufficiently like it for you to be able to tell us who you think wrote it ?—May I see it ? (The paper was handed to the Witness.) I have no doubt about it.

709. I would rather get it from you than suggest. Who do you say you have no doubt wrote it?—Mr. Ross.

710. I should like you to tell the Jury how you come to give evidence in this case—

Mr. ELDON BANKES: I do not make any complaint about his giving evidence.

Mr. Justice DARLING: Why, since his evidence is true?

Mr. MONTAGUE LUSH: It is to forestall any suggestion. That is all I want to ask him.

Mr. ELDON BANKES: I have no question.

Mr. FREDERICK GEORGE HOLLANDS, sworn

Examined by Mr. F. E. SMITH

711. Are you Messrs. Murray's town traveller representing them in London, and a district, of which London is the centre, of 25 miles radius?—Yes.

712. How many years' experience have you had of the publishing business?—Twenty-three.

713. How many of those have you been with Messrs. Murray?—Sixteen.

714. Will you state exactly what your business on behalf of Messrs. Murray is?—My business mainly is to take round copies of new books, showing them to the trade, and taking orders for them.

715. What trade? The booksellers?—Of course.

716. Did you follow this practice with regard to "The Letters of Queen Victoria" before its publication?—Yes.

717. How many orders did you take before publication?—4,530.

718. How did the advance sales of the Queen's Letters compare with advance sales of works of similar pretensions, and expense, and cost?—It was fair, but not up to my expectations.

719. I am talking now of the advance sales before

publication?—I say it was fair, but not up to my expectations.

720. How did it compare with previous books of about the same cost?—I do not ever remember a book of a similar nature at that price. Books at three guineas as a rule are art books, not to be compared.

721. You could not really compare it, then?—No.

Mr. Justice DARLING: It is almost an impossible thing to compare, because it is not a life, or history, or memoir; it is only letters.

Mr. F. E. SMITH: Yes, my Lord, it is a very unusual book.

722. Will you tell me generally, does a large advance sale as a rule nearly exhaust the trade subscriptions?—Oh no.

723. When they subscribed to the Queen's Letters before publication, before the first letter of "Artifex," was any complaint as to the price of the book made to you?—None whatever.

724. In the course of disposing of this number you have mentioned—4,000—have you had any complaint at all about the price?—No.

725. After the letter of "Artifex" appeared what was your experience then—after the publication of the letter in "The Times"?—The first letter of "Artifex"?

726. Yes?—The sale began to drop at once.

727. Were any complaints made to you?—Yes; complaints were made to me generally by the trade that after the letter of "Artifex" they could not risk stocking the book.

728. What was the result of your efforts to subscribe the book among the trade?—After subscription, of course, particular efforts to get repeat orders were made. The only mode we could take to get a man to have copies, or to keep the book in stock, was, as we say in the trade, to see him right.

729. Is that an arrangement less favourable to the publishers than out-and-out sales?—Certainly; the publisher takes the risk instead of the bookseller.

730. That you were compelled to do?—Yes.

731. Did you do it in many cases?—Yes, in a good many cases.

732. In your experience, what would you have expected to be the life of a book of this kind?—I should have thought it would have gone on selling well for at least twelve months.

733. You have not known a book precisely like this; to take a serious political book of this class you would expect its lifetime to be about twelve months?—Yes.

734. Did you devote yourself entirely to the sale of this book, or did you attempt to subscribe other books at the same time?—No, I subscribed it alone.

735. Is the practice only to subscribe a single book?—No; I generally take four or five, or even six books at times together, but I find it is an advantage if you have a special book to take it round alone, and the trade pays more attention to it then than it otherwise would do.

736. You have great experience of books and their prices. What do you say as to whether these books could, with advantage to the sales, have been published in a cheaper form?—I say certainly not.

737. Can you in your experience tell us whether or not you found the influence of "The Times" reviews to be very considerable?—Yes, a good review in "The Times" will always do a book good.

738. Have you heard what Mr. Young said?—Yes.

739. You share his views on that point?—I do.

Cross-examined by Mr. ELDON BANKES

740. I understand that in your experience this is a unique book?—That is so.

741. You have never had a book of this class to deal with published at this price?—No, I have not.

742. When did you begin to take round copies and try to get the advance subscriptions?—I started on the 1st October.

743. As I understand, before the book was published you secured 4,530?—Yes.

744. Do those include those I mentioned yesterday of Simpkin & Marshall, Hatchards, and Boots?—Yes.

745. Those would include all the original subscriptions?—Yes, it would include all the principal booksellers in London, and some few exporters.

746. And it would include, would it not, the persons to whom you could offer special prices?—Yes, certainly.

747. For instance, among those orders were included £1,250 to Messrs. W. H. Smith & Son, at £1 11s. 6d.?—Yes.

748. Then they sold 1,000 at £1 17s. 6d.; do I understand that Messrs. Murray were not prepared to offer those prices to people, except those who took large quantities?—That is so.

749. It is the fact, is it not, that when you got orders for 4,530 you had exhausted all the book people?—Yes.

750. So that after that date you were taking the book round to a different class?—No; the same people.

751. How do you mean the same people?—I mean those were the first initial orders, and I had to go round to the same people to get the repeat orders.

752. But, of course, in addition to these people you were also working people who would take the copies?—Do you mean in addition to the five principals?

753. Yes?—Yes.

754. Those people would, of course, have to give the full trade price for it?—Yes; it depends on whether they were exporters or what they were.

755. You say the advance sales had not come up to your expectation?—I think I ought to have done better.

756. You completed your advance sales before "Artifex's" letter ever came at all?—Yes.

757. So that as a matter of fact you were disappointed at the way in which the book went before either the review or the letter?—Yes, because the booksellers felt very doubtful about stocking the book over and

above anything they could sell within a few days of publication, because they feared what action "The Times" would take.

758. That is another matter again. As a matter of fact you were disappointed in your expectations before either the review appeared or the letter?—Yes, because of the particular reason I have stated.

759. That reason has reference to the general book war?—It has reference to the way in which "The Times" had treated certain books at times. Take Lord Randolph Churchill's Life, for instance.

760. That has reference to the general book war, and has no reference to this particular letter?—Only that the Queen's book, having a special interest and all that sort of thing, "The Times" would be pretty sure to try to do something to injure it.

761. You mean as an incident in the book war?—It is all in the book war, I may say.

762. You say that you received no complaint as to the price of the book?—No, everybody praised the book and said it was well got up and well worth the money.

763. You would not expect a complaint as to the price of the book from the bookseller, because the larger the price the better his profit?—No; he would refuse it if too dear.

764. But the fact is that the larger the price the better the profit?—Yes.

765. So that if a bookseller thought he could sell the copy, the larger the price for which he could sell it the better for him?—Yes; but if he thought it was too high a price he would not buy it.

766. You say the sales began to drop after the letter of "Artifex"?—After October 21st.

767. As a matter of fact you had exhausted your best customers by that time?—No, not exhausted—certainly not.

768. Just think. You had got orders from these large firms which they could not possibly have got rid

of by the 21st October?—I do not know. They might have done.

769. They might have done, but when you have got orders from all your principal buyers the sales must necessarily drop?—They would for a day or two, of course.

770. And they would drop until people had disposed of the copies and wanted more?—Yes; but this is a book for buyers representing libraries mainly.

771. I want to understand exactly what you mean when you say the sales began to drop at once after the letter of "Artifex." Do you mean you did not sell so many after the letter as you did before?—Quite so, that is so.

772. That one can understand. That you would expect, would you not?—No. I have the figures of my sales if you like to have them.

773. We should like them very much?—On October 16th, the day the book was published, I sold seven copies; on the 17th, 23; on the 18th, 85.

774. That was the day after the review?—The day after the review, but the day before the letter. On the 19th, which was a Saturday, 30; on the 21st, 108.

775. That was after the letter?—That was when the letter began to take effect.

776. You sold 108 that day?—Yes. I might explain out of that 50 copies were ordered by the Army and Navy Stores, and the order was dated on the 19th, which was the same day as the letter appeared.

777. We have got 108 on the Monday?—On the Monday I took no orders.

778. Did you go out?—Yes, certainly.

779. I suppose in the ordinary course of events there must be some days when you have to travel over what I may call an unprofitable district?—No, never. I always get orders of some kind.

780. There was no order on Tuesday?—Not for that particular day. On the next day I took orders for 7; on the 24th, 39; on the 25th, 26; on the 26th, 8.

That was a Saturday again. The 28th was a Monday no orders. On the 29th, no orders; on the 30th, 67; that included a repeat of Messrs. Simpkin for 50. November 1st, 11; November 2nd, 11; November 4th, 7; November 5th, no orders; November 6th, 7; November 7th, no orders.

781. Are those all you have got?—No. November 8th, 25; November 9th, 20; November 11th, no orders. That is as far as I go.

782. That shows, does it not, that they fluctuated very much?—On the whole it was downward.

783. If you give me the paper I will see. Did you sell any in November?—Yes, some.

784. Why did not you bring December?—I did not know how long you would want to go on, but they go on in December and gradually increase towards Christmas, but in no case did I sell more than 77.

785. You sold 77 in a day?—In one day.

786. Can you give me the numbers for December?—Yes.

787. Would you mind doing that and let me have them?—I cannot now.

788. You do not mind my keeping this paper?—No, not at all.

789. Were these prices that you fixed with Messrs. W. H. Smith and other firms a matter of bargain between you and them?—Yes.

790. Did you take £1 11s. 6d. from Messrs. W. H. Smith because they would not give you any more?—No; because of the number they wanted them at £1 11s. 6d.

791. They wanted them at £1 11s. 6d., and that was the most that you could get them to give?—They wanted that for 1,000 copies to start with.

792. That was the most you could get them to give?—They increased their number of copies, but not their price.

793. That was the best bargain you could get out of them?—Yes.

794. May I take it that it is the same in the case of Simpkin & Marshall and all these other people?—Yes.

795. You got them to give as much as you possibly could?—Certainly.

796. You say that occasionally with a special book you limit yourself to travelling in that book for a time and do not take other books?—Only during subscription.

797. So that on these days after the book was published you were travelling with other books as well?—Certainly.

798. Do you take special districts? For instance, one day would you go to one district and another day to an entirely different district?—My work mainly lies in London here.

799. Do you take different districts on different days? Would you go to Tooting one day and on another day to Islington?—No, I do not go outside London as a rule.

800. And 25 miles round, I heard somebody say?—Three times a year I do that. That is all. My work lies chiefly between St. Paul's Churchyard and Sloane Street.

801. On the Monday I see you got no order—on the 28th October. Can you tell me where you were on that day and whom you called on?—Not off-hand.

802. It may be that you then called upon persons who are not free buyers. There is a great difference between the people?—Naturally some people buy better than others.

803. On some days you may have unlucky days and get into a class of bad buyers?—I might do, but I would know where to go to get good ones.

804. You got no order on the 28th and no order on the 29th, but on the 30th you got 67?—Yes.

805. And then I see on the 6th November you get seven orders; on the 7th no order; on the 8th, 25; and on the 9th, 29.

Re-examined by Mr. F. E. SMITH

806. I only want to ask about one of the figures you have given. On October 21st, the Monday after the libel appeared, you say you sold 108 copies. How many of those were with the Army and Navy Stores?—They had arranged on the Saturday for an order for 50 copies. It reached me on Monday, the 21st, and so is included in that day's sales.

807. That left 58 copies as the result of Monday's own sale?—That is so.

808. These numbers represent the sales to the end of November, with four days on which no order was obtained at all. Was there a single day of those business days contained in your list on which you did not attempt to obtain orders in quarters which you thought were likely?—No, certainly not.

809. You will bring here this afternoon your list of sales in December and also covering the Christmas holidays. You can do that?—Yes, I can get them out, I think.

810. I do not know whether you can do it this afternoon. You have to go to Albemarle Street and take extracts, but you will do your best to get it this afternoon or to-morrow?—Yes.

811. Even on this reduced scale of supply, was that under the indemnity system to the bookseller of which you have spoken?—In many cases.

Mr. DAVID RICE, sworn

Examined by Mr. F. E. SMITH

812. Are you Mr. Murray's country representative?—I am.

813. Do you represent him everywhere except in London and 25 miles round London?—I do.

814. That is in England, Scotland, and Ireland?—Yes.

815. How many years' experience have you had of the publishing business?—Nearly 30 years.

816. How long have you been travelling representative of that business?—Over 20 years.

817. And you have been with Messrs. Murray for how many years?—Between nine and ten years.

818. What exactly is your duty in this business?—My duty is to get advance material of Mr. Murray's publications and to attempt to sell them to the book-sellers in the United Kingdom.

819. When a book appears in the quarterly list of books, you get advance material to show to the trade?—Yes, I get advance material—pictures, cover designs; anything that I think might be useful.

820. Do you call at each important town in a kind of tour round the kingdom?—Yes, I have a regular journey.

821. Did you follow this practice with regard to "The Letters of Queen Victoria"?—Yes, I did.

822. Tell my Lord and the Jury what your experience was as regards obtaining orders before the publication?—I think orders came in pretty freely for such an expensive book.

823. Have you the figures of the number of orders you obtained?—It was 782, I think.

824. How did the advance sale of this three-guinea book compare with other works about that price which you have dealt with?—It was altogether a more special book than any other book I had ever dealt with. I had not had a similar book for three guineas.

825. What is your experience in cases where you have a large advance sale? What do you usually find as regards the future publication?—If the book is well reviewed, then the sale continues and grows considerably.

826. You read the review which was published on the 17th October, and the letter signed "Artifex" and the subsequent letters that appeared in "The Times"?—I did.

827. After reading the review and the letters, what

was your experience as regards your business in the country?—The first town I visited after the review and letter appeared was Bath.

828. Who is the principal bookseller in Bath?—A Mr. Simms.

829. I do not want you to go into any conversation with Mr. Simms, but was there any complaint?—He had read the review and said—

830. Do not tell us what he said. How many copies of the Queen's Letters had he taken?—He had taken a dozen copies. I have not the figure before me, but I think it was a dozen.

831. Do you remember whether he had sold a number of them or not?—He had sold nearly all of them.

832. Did you press him to take more?—Yes, I wanted him to take another dozen, but he said he did not see his way to do so.

833. You need not tell us what it was, but he gave you a reason for not taking more?—He did.

834. Did you finally persuade him to take more copies?—No, I failed to persuade him, and I finally sent him seven copies on sale or return.

835. That is to say, you practically indemnified him against any possible failure on his part to get rid of them?—I did.

836. Is that your usual practice?—It is a thing I had never done before, and I did it without Mr. Murray's sanction, and I looked forward to some trouble about it, I may say.

837. It is a thing practically unknown among high-class publishers?—It is.

Mr. ELDON BANKES: The other gentleman said he was in the habit of doing it. He said it was his practice. He said, "I see them through."

Mr. F. E. SMITH: I think there is a misconception on that.

Mr. Justice DARLING: He said, "I had to do what we call making the bookseller right by seeing him through."

Mr. F. E. SMITH : I agree, but the point is—

Mr. Justice DARLING : We have not had, owing to the rules of evidence, why it was he made that remark.

838. Mr. F. E. SMITH : I will tender the question. Did Mr. Simms tell you why he did not care to give further orders ?—He did.

839. What did he say ?—He said that he was afraid “The Times” review would have a very adverse effect upon his customers, most of whom had read it, and he did not feel disposed to take the risk of adding to his stock of this book.

840. I will not take you through your detailed visits at Bath, but when you left Bath was your expectation of the sale of the book at Bath realised ?—It was not.

841. After leaving Bath did you go to Bristol ?—I went to Bristol.

842. Did you sell many copies at Bristol ?—I sold a few copies there.

843. From Bristol where did you go ?—Cheltenham.

844. Did you pay some business visits there ?—Yes, I did.

845. In relation to this book ?—Yes, in relation to this and other books.

846. Did you hear anything from the booksellers there about this libel ?—Yes, I heard complaints from Mr. Banks.

847. Who is Mr. Banks ?—Mr. Banks is one of the Cheltenham booksellers.

848. He has a large business there ?—He has the best business in Cheltenham. He said the effect of the review and the letters of “The Times” was having a very bad effect upon his sales, that people were coming in and complaining that the price of the book was altogether too dear and there would soon be a cheap edition, and he was very seriously upset by it, because he had hoped to do very good business with it.

849. In the sequel how did the number of copies of the book that you were able to place in Cheltenham compare with what you had anticipated ?—I had to

be content with placing them in the way I placed them with Mr. Simms. I was not able to get a definite order.

850. On an indemnity?—On sale.

851. From Cheltenham do you recollect where you went?—I went to Gloucester after that.

852. Did you offer the book there again?—Yes, there again I left a single copy. Gloucester is a small place, not much of a book-buying centre, but I did leave a copy there also.

853. Can you give me the name of the bookseller at Gloucester?—Minchin & Gibb is the name.

854. Was that supplied on sale or return?—It was.

855. You have told me about Cheltenham. Did you go to Swansea?—

Mr. Justice DARLING: Do you propose to take him all over the United Kingdom?

Mr. F. E. SMITH: I thought of leaving Ireland out, in justice to Ireland.

Mr. Justice DARLING: Had not you better take it very generally?

856. Mr. F. E. SMITH: I will. Perhaps I might put the names to him. Did you go to Cheltenham, Swansea, Newport, Cardiff, Brighton, Hove, Eastbourne, Portsmouth, Bournemouth, Taunton, Truro, Maidstone, Winchester, Ipswich, Tunbridge Wells, Birmingham, Liverpool, Belfast, Leeds, and Manchester? Did you visit all those towns in your peregrinations?—I did.

857. Was your experience in those towns similar to that which you have described in reference to the two or three I have asked you about specifically? I am sorry to say it was.

858. Did you in very many of those cases send copies of the book on sale or return?—I did.

859. You were met with complaints as to which you can give full details if you are asked?—Yes.

860. You heard the evidence given by Mr. Young, of Liverpool?—Yes.

861. What in your experience would you say as to the extent of the influence of "The Times" review on

your business, which is that of disposing of books?—I should say it had a very large influence. Its influence was very great.

862. Can you form any idea as to the number of copies you would have sold but for the appearance of this libel?—I cannot give you any definite figures, but I ought to have sold a far greater number than I did, and should have sold if this libel had not appeared.

863. I cannot ask you the life of a book of this sort, because you have told me you do not remember one very like it, but a serious political book published on this scale in three volumes, what do you say would be ordinarily the selling life of it?—It ought to go on for at least a year.

(Adjourned for a short time.)

Cross-examined by Mr. ELDON BANKES

864. I have not many questions to ask you. I understand you do a regular journey?—I do.

865. And you have given the names of a great number of towns to which you went in connection with this book?—Yes.

866. How long would you take to do the journey for those towns that my friend mentioned to you?—Five weeks, I should say.

867. You say that orders came in freely for such an expensive book. Have you ever had a book so expensive of this class in your hands before? No, I never have.

868. It was quite exceptional in that way?—It was an exceptional book altogether.

869. It was quite exceptional as regards the price?—Yes.

870. Did you book some orders in advance before the book came out?—I booked 782 orders before the book came out.

871. Did you travel all over this journey before the book came out?—After the book came out.

872. Did you do it before?—I had not gone to those places with the Queen's Letters.

873. Not before the book came out at all?—No. It was the finish of my regular journey. I start in August, and this was the tail end of my journey.

874. So may I take it that the orders you booked in advance were at places other than these?—They were.

875. You did not go to these places at all to try and get advance orders?—I had not been.

876. Did you get as many orders as you anticipated in advance?—Generally, do you mean?

877. I mean altogether. Your fellow traveller was dissatisfied with his results in advance. Were you satisfied or dissatisfied?—I do not think a traveller has any right to be satisfied.

878. May I take it that in accordance with your practice you were dissatisfied?—I was dissatisfied.

879. It did not sell as well as you expected?—No, I did not do as well.

880. You found that to be the case before there was either review or letter?—I was dissatisfied.

881. That was your experience. Do you think the price had anything to do with that?—No, I do not think it had.

882. Just think. The bookseller who is ordering has to think of his custom?—Yes, he has.

883. May I not take it that the class of persons who would be customers for a three-guinea book is limited?—It is so.

884. Do not you think that the price had something to do with the fact that you found you were disappointed with the number of orders you got?—No.

885. I am not saying for the moment whether, as far as Mr. Murray was concerned, it was too high or too low; but do not you think the fact that it was a three-guinea book had a great deal to do with the result you found?—No, I do not think it had anything to do with it.

886. I understand after the book came out and after

the review was published it was that you went to these places ?—It was.

887. You have told us that some of the booksellers referred to the review ?—Yes, a great many of them did.

888. And said that it was the review that had done harm ?—The review and the letters.

889. Did they mention the letters ?—Yes, they mentioned the whole thing.

890. Let me consider a little carefully, because I asked you that question specially. You were twice asked what the bookseller told you and you said to my friend on each occasion that it was the review they mentioned. Mr. Simms, who was at Bath, said that he was afraid that the review would have a detrimental effect ?—Mr. Simms, I think, only mentioned the review.

891. Then you went to Bristol. You did not say anything about that. Then you went to Cheltenham, and you spoke about what Mr. Banks said to you ?—Yes.

892. And you said Mr. Banks said that the review was having a bad effect on the sales ?—I think it was on the 18th that I went to Bath, if I remember rightly.

893. Have you not got your dates ?—Yes, I have. It was on the 21st I went to Bath.

894. That was after the review and the letter ?—Yes.

895. When you went to Cheltenham ?—Mr. Banks certainly mentioned the letters as well as the review.

896. Give me the date you went to Cheltenham ?—I went to Cheltenham on the 23rd October.

897. You were asked what it was that Mr. Banks said to you, and I raised no objection when you told my friend that Mr. Banks said that the review was having a bad effect on the sales ?—I may have said that, but the whole thing was having a bad effect. I simply answered the question.

898. You were asked what he said ?—Will you allow me to amend and say the whole thing had a bad effect.

899. You can amend, as they say, at your peril. I want to know, because this is an important matter. Are you prepared to pledge your oath that Mr. Banks mentioned the letter?—I am prepared to pledge my oath that Mr. Banks went with me into the whole thing—the letters and the review.

900. No, no; that may include the book war. I ask you on your oath did Mr. Banks mention the word "letter"?—He certainly did.

901. How came you to forget it when you were asked before?—I did not forget it. I rather assumed that one governed the other.

902. In the book trade you have told us that these reviews are looked upon as very important?—They are.

903. In the book trade would not people attach more importance to what is stated in the review than what is stated in a letter?—It would depend entirely upon what the statement was, I think.

904. You have also said something else that Mr. Banks said. You told us that Mr. Banks said that people were coming in and saying that the price was too dear?—Yes.

905. That would be a complaint that might come from people who had seen neither the review nor the letter?—I stated that these mentioned "The Times" in connection with this.

906. I think again you are mistaken unless I wrote it down wrongly. What I have written down is: "I heard a complaint from Mr. Banks, who said the review was having a bad effect on the sales, and he said that people were coming in and saying the price was too dear"?—I might have been more explicit and added the remark that I have just made.

907. You notice there is a great distinction?—Since you have pointed it out there is a distinction.

908. Did you make any note of what these people said to you?—No, I did not; I was hearing it all day long.

909. How many copies did you sell altogether?—I have not got the figures.

910. You must please get them?—I can get them, but I did not know that they would be required.

911. Can you give me an idea how many?—I am afraid I cannot, not without referring.

912. Did you sell 1,500?—I did not sell as many as that.

913. Did you sell 1,000?—I should doubt if I sold 1,000. I can give you the figures later.

Re-examined by Mr. F. E. SMITH

914. Would it take you any time to work out the figures? Suppose you went to Albemarle Street as soon as you leave the box, how long will it take you to come here with the figures?—I should think in an hour or an hour and a half. I should have to go through my order books and take them out separately.

915. Will you do that?—I will.

916. My friend has asked you whether the complaint was not made to you by different booksellers that the price was too high. Did you sell more copies of this book before the libel appeared or after it appeared?—Before it appeared.

917. In relation to that greater number of copies which you sold before it appeared had you a single complaint as to the excessive price of the book?—No, I had not.

918. So that all these complaints of which you have spoken related to the sale of the smaller number of books after the libel appeared?—Yes.

Mr. JOHN AVERY, sworn

Examined by Mr. F. E. SMITH

919. You are the secretary and managing director of Messrs. Bickers & Sons, booksellers, carrying on business at No. 1, Leicester Square, London?—Yes.

920. Is the business of Messrs. Bickers & Sons a large one?—Very.

921. I think it has been established for a considerable time?—Over 70 years.

922. You have had considerable experience?—36 years in one house, and four years in the country before that.

923. When this book, "The Letters of Queen Victoria," appeared, did your firm give some orders for it?—Yes, 25 copies.

924. Do you recollect whether those were given directly to Messrs. Murray or whether they were given through travellers?—Through the traveller.

925. Who would that traveller be?—Mr. Hollands.

926. That is the witness Hollands?—Yes.

927. What happened to those 25 copies? Those would be subscribed copies before the publication?—We subscribed.

928. That means before the publication?—Yes.

929. Did you sell those copies?—On the first day.

930. Did you hear any complaint in relation to any one of those copies as to the price being too high?—I do not remember a single one.

931. After you had got rid of those 25 copies on the first day did you order any more?—Yes, 13 the same evening, Thursday, the 16th, and 13 more the next evening.

932. Did you sell the first 13?—Yes.

933. They went off almost immediately, I think?—Yes.

934. Was there any complaint by any of the purchasers of those?—I do not remember one.

935. You say you ordered 13 more copies the next day. That would be the 17th?—We ordered them on the night of the 16th, and they came in on the 17th. Then we ordered 13 more on the night of the 17th, which came in on the 18th, and 13 more on the night of the 18th.

936. Did you sell the second lot of 13?—Yes.

937. You sold them almost at once?—Yes.

938. Then when was your next order?—We ordered 13 more on the night of the 18th, the Saturday.

939. The 18th was not a Saturday; the 18th was a Friday.

Mr. Justice DARLING: Thursday was the 17th. That was the date of the review.

940. Mr. F. E. SMITH: And the 19th is the date of the alleged libel?—Then I am a day behind.

941. It would be on the 18th that you ordered your second lot of 13?—On the day of delivery we ordered 13 in the evening. We had had the 25 in the morning, and we ordered 13 more in the evening. We ordered 13 on the Friday evening and 13 more on the Saturday evening, which came in on the following Monday morning.

942. Did you read the letter of "Artifex" in "The Times"?—I did.

943. Until that letter appeared on the 19th October had you had, as far as your memory goes, one single complaint about the dearness of the book?—I do not remember one single complaint.

944. Will you tell my Lord and the Jury what your experience was after the appearance of the first letter of "Artifex" on the 19th October?—Absolutely fatal. The copies that came in on the Monday morning, which was the 21st, lasted us until the 9th November.

945. That was only 13?—Only 13. I never remember such a thing before.

946. Was that due to any slackness in the way you offered them to the public?—No.

947. Did you offer them to the public?—Yes, and our attention was repeatedly called to that letter signed "Artifex."

Cross-examined by Mr. ELDON BANKES

948. Of course your business is a very well known and a very well established business, and you have a large clientèle?—Yes.

949. A regular clientèle?—Yes.

950. I presume when you subscribe for a book of this kind you make a kind of forecast of the numbers that you are pretty certain to get rid of?—Oh no.

951. Do not you?—No.

952. You get an advantage, do you not, in an advance subscription?—Very slight— $2\frac{1}{2}$  per cent.

953. You do get an advantage?—Very slight, not worth considering.

954. At all events you would to some extent arrive at the number you subscribe for by the number that you think you are likely to sell at once?—No, not by any means.

955. Why should you subscribe for 25 and Messrs. W. H. Smith for over 1,000?—Messrs. W. H. Smith have a colossal mansion to store their things, whereas we have a very small space, which is overcrowded.

956. You suggest that you fix your subscription according to the space you have for storage?—Yes; because we can repeat our orders within half an hour.

957. You fix this small quantity of 25 because of the space you have available to put it?—Yes, and because of the little necessity to order big numbers.  $2\frac{1}{2}$  per cent. is not worth considering.

958. The day the book was published was on the 16th?—I will say the Thursday.

959. That is the 17th?—Yes.

960. You say it was published on the 17th?—Yes.

Mr. F. E. SMITH: It was published on the 16th.

961. Mr. ELDON BANKES: I thought so, but he said it was published on the Thursday. You mean published to you. You got your first copies on the Thursday?—Yes, that is as I remember it.

962. By that time you had got your original 25 and 13 in stock?—No, the 13 came in the next morning.

963. I think you have got all your dates wrong. On the Thursday your first lot of 25 came in?—Yes.

964. Then you got another lot of 13 on the Friday?—Yes.

965. And another lot of 13 on the Saturday?—Yes.

966. So that you had 26 and 25 during that week?—Yes.

967. You sold them all in a week?—Yes.

968. The following Monday would be the 21st, and then you ordered 13 more?—We ordered them on the Saturday.

969. They came in on the Monday?—Yes.

970. And you did not dispose of them until the 9th November?—Yes.

971. That is the whole of your story, is it?—That is the whole of the story.

972. Amongst your clientèle have you not some people who come at once for every new book?—Yes; but a book of that sort continues to sell. It is not finished in a day or two.

973. It depends upon the number of your clientèle who have three guineas to give for it?—We have plenty, I am glad to say, and we had six or seven of our best weeks in the year to come.

974. With any book of this description do not you find your regular customers come at once for it?—No.

975. You do not think so?—No.

976. Have you sold any since 9th November?—Yes. We had another 13 on the 13th, and we have sold copies since that, but not half what we should have sold but for that letter.

977. That is prophecy?—It is based on 36 years' experience.

978. Yes, I know; but, after all said and done, there are many disappointments in the book trade?—Not a book of the kind of Queen Victoria's Letters. There should have been no disappointment in that. Of course I can only give you a statement founded on experience.

979. I quite accept that?—I have been a working man in the business all that time. I have not been a figurehead.

980. I quite accept it as your honest opinion, but, after all said and done, it is only an opinion?—But well

based. Mr. Murray should have sold every copy he has in the house if it had not been for that letter.

Re-examined by Mr. F. E. SMITH

981. In your view he would have done?—He would have done certainly.

Mr. WILLIAM JOHN BARWICK, called

Mr. Justice DARLING: Is all the evidence you are going to call evidence of the same class—evidence to the same effect?

Mr. F. E. SMITH: All the evidence I propose to call is evidence which is of the kind that has already been given.

Mr. Justice DARLING: Do you think it necessary?

Mr. F. E. SMITH: I should like to call these witnesses if I may. It will not take long.

Mr. Justice DARLING: This one witness.

Mr. F. E. SMITH: I should really like to call two others after Mr. Barwick. I think they are of importance. I will not take them at any length.

Mr. Justice DARLING: Very well.

Mr. WILLIAM JOHN BARWICK, sworn

Examined by Mr. ROWLATT

982. Are you a director of Messrs. Truslove & Hanson of Sloane Street?—Sloane Street and Oxford Street.

983. They are booksellers?—They are booksellers.

984. Did you read the review and the letter of "Artifex" in "The Times" about Queen Victoria's Letters?—Yes.

985. In your judgment did they have any effect on the sale of the book?—Absolutely. I should like to rather enlarge upon that if I may at this time to give a reason for my judgment.

986. We have had some evidence about it already. How do you say it injured the book?—In this way. Within the first three days of publication we sold some 40 copies, and in my experience as a bookseller when a book of value is well reviewed on the one hand and the sale already reaches a considerable height it goes on in an increasing ratio, every day larger and larger. People talk to their friends about it. In Sloane Street we have perhaps the best clientèle in London, and once a book is really a success, right up to, without exaggeration, six months it goes steadily up and up; but in regard to this it went down like a blue rock pigeon being shot, three days after.

987. On what day was this?—Roughly speaking, a day or so after the libel. Most of our customers read “The Times,” and I can give evidence of the direct effect it had on the book.

988. Did you anticipate before that came out that you would be ordering more copies?—Absolutely.

989. Did you order any more?—May I refer to my figures?

990. Yes?—On October 16th I ordered 22 copies; on the 18th I had sold the 22 and I ordered 9 more; on the 19th I ordered 9 more. Of course I was not certain when I ordered my 22 copies how the book would go, but the reviews were so splendid, and the book was selling so well, that I should then have ordered a much larger number, but then came the gun of “The Times,” and my hopes were entirely frustrated.

991. Did you order any more?—I did not order any more until the 1st November. I sold 40 copies in the three days before the libel, and I did not order any more until the 1st November, when I ordered seven copies.

992. Were you influenced by what had been written over the signature of “Artifex” in “The Times”?—Not myself, because I knew the falsehood of it, but my customers were.

993. Your customers were?—Absolutely.

994. Did you anticipate less custom from your customers?—No, I anticipated more before the libel.

995. Mr. Justice DARLING: After you read the letter of "Artifex," did you then anticipate that your custom would fall off?—I anticipated it before, because my attention was drawn by the grumbling of my customers to the letter of "Artifex." I did not read it first-hand. My attention was called to it by my customers.

996. Mr. ROWLATT: It was that that led you to anticipate less custom?—Absolutely. I felt the book was doomed, as Randolph Churchill's book was.

Cross-examined by Mr. ELDON BANKES

997. Are you a member of the Booksellers' Association?—I am.

998. Are you on the Council?—I am not.

999. Have you ever been on the Council?—No.

1000. But you are a member of the Association?—I am.

1001. I believe you are not on the Council, but your partner is?—He is.

1002. You ordered 15 books for Sloane Street, and seven for Oxford Street. Is that right?—I think I can elucidate the thing. 15 and 7 are 22. I ordered 15 on subscription, but before then I ordered another seven copies, possibly by letter, because our first delivery was 22—that is the invoice of Mr. Murray.

1003. You ordered 22, and I suppose you were on the look-out for the review?—Generally speaking. At the period of October a bookseller's life is a very difficult one, a very busy one, and, generally speaking, I do not read the reviews at that time of the year like I do at other times. I was not on the look-out for the review; I casually read a number of the reviews.

1004. You say your experience is that when a book is well reviewed the sales become larger and larger?—Yes.

1005. "The Times" review was on October 17th?—Yes.

1006. And the other reviews, I suppose, would appear roughly about the same time?—Yes.

1007. I suppose, as a business man, you would be generally acquainted with the fact that the reviews were very favourable?—Undoubtedly.

1008. So that you expected the sales of this book to go up and up?—Absolutely.

1009. In spite of that you ordered only nine copies?—Ah, but that was the next day.

1010. The very day you expected the boom to begin?—Yes, but I am only five minutes' walk from Mr. Murray. After the initial number I get no advantage, and why should I risk it? Mind you, I knew that these times were troublesome times for the booksellers. I did not know what “*The Times*” might do. It was the common talk of the trade beforehand when we met each other, not in council, but perhaps in general assembly. I am not on the Council, but I meet my brother booksellers at times.

1011. You meet your brother booksellers at the Association?—No; perhaps at a smoking concert, or something even worse than that.

1012. But I suppose you have always one eye on “*The Times*” even at a smoking concert?—For years we have had to have a very steady eye on “*The Times*.”

1013. To see what little dig you can give it?—No; I am without prejudice.

1014. The Jury will judge of that?—

1015. Mr. Justice DARLING: Mr. Bankes has elicited from you that you have always one eye on “*The Times*,” and that is not because you want to have a dig at it. Why do you keep one eye on “*The Times*”?—I fear “*The Times*. ” “*The Times*” has injured my trade. I am carefully weighing my words. The evidence I have given is absolutely true. I have given it having regard to the figures. “*The Times*” has seriously injured me as a bookseller.

1016. Is that why you keep your eye on it?—I have a keen sense of honour.

1017. I am not asking you to liberate your mind about "The Times." You have told me why you keep your eye upon it?—Because they have injured my trade in times past.

Mr. WILLIAM McLAUGHLIN, sworn

Examined by Mr. ROWLATT

1018. Are you in charge of the book-room at the Army and Navy Stores?—Yes.

1019. Have you the conduct of the sale of "The Letters of Queen Victoria"?—Yes.

1020. Did you read the review?—I read it several days after, because my attention was called to it by our customers.

1021. Did you read the letter?—Yes, I read the whole of it.

1022. Was that because your attention was drawn to it?—Yes. I did not see it before, really.

1023. Had you received any complaints before that as to the price of the book?—No, none whatever.

1024. Did you ever tell any one that you were afraid to touch the book?—I have no recollection of any such statement, and I have made inquiries, and I can find no one who made that statement.

1025. As far as you know, it was not made?—Not so far as I know.

1026. How many copies did you order in the first instance?—We were very careful in ordering, because we have experienced some difficulty with large books. Ever since "The Times" made the statement that books were too dear, people have got the impression that books are too dear, and in consequence of that we ordered a safe number.

1027. How many copies did you order?—75.

1028. Did you anticipate at that time that you would order more?—Yes, we quite anticipated a larger number.

1029. How did the sale go?—For the first few days the book sold very well.

1030. Up till when?—We had 75 on the subscription, and on the next day we ordered some quires—that was to bind up, to make it a bound book. Then on the 19th—that was before I had seen the letters in “The Times”—we ordered a further 50 copies. They were delivered to us, I think, on the 21st.

1031. At that time was there a sale for the book?—Yes, we were doing very well with it.

1032. Did that go off afterwards at all?—Yes. After that the numbers went down considerably. You see, we had many complaints from our customers.

1033. When did you have the complaints?—About the 21st, I think it was.

1034. You then read the libel?—Yes. I did not read it till then. We were very busy up to that time.

1035. In your judgment as a bookseller, did that letter of “Artifex” injure the sale of the book?—Yes; we were told by many of our customers that the book—

Mr. ELDON BANKES: I think this is going too far. I have given them every licence.

Mr. ROWLATT: Very well. Your opinion is that the book was injured?—Yes, certainly.

Cross-examined by Mr. ELDON BANKES

1036. Have you got the dates, because it will assist matters very much, on which you sold these copies?—We do not keep a list of sales. I can only refer to the orders. We ordered a certain number on certain dates. We do not let our books run out of stock. We order more before they are gone.

1037. You cannot give me the dates on which you sold those copies?—No; but by the appearance of the orders—October 16th, 75 copies, and October 21st, 50 copies—the book sold wonderfully well.

1038. But you cannot tell me how long it took you to

sell the 50 copies that came in on the 21st?—We did not order again until the end of the month.

1039. That would be the end of October?—That would be the end of October.

1040. You sold 50 copies between the 21st and 31st October?—That does not follow. I have just now said that we do not sell all our books out before we re-order.

1041. I suppose you sold the bulk of the 50 copies before you gave the fresh order?—We might have sold 25.

1042. Is that a guess?—No. That is what I should reckon.

1043. Mr. Justice DARLING: You had subscribed for 75?—Yes, my Lord.

1044. When you talk of those 50 do you mean 50 out of those 75?—No; that is an additional order.

1045. Mr. ELDON BANKES: You cannot tell me the days upon which you sold the 75?—No; we keep no record of our sales in that way. When we see a book is going, and it is getting low, we re-order.

1046. At any rate your stock was getting low by the end of October?—Yes.

1047. When did you order next?—On the 7th November.

1048. How many did you order?—25.

1049. Then when was the next order?—On the 30th December, 13. You will notice the sales dropped considerably then. On the 6th December, 13, and on the 7th December we had seven quires; that is 30 sheets, you know, to bind up.

1050. How many sets would that be?—Seven. Then on the 13th December we had 13 more copies, on the 21st December three copies.

1051. That takes you to the end of the year?—No. On the 23rd December we had four copies; and I may mention that during December we always reckon to sell four times the number of books that we sell during any other time of the year.

1052. Not because people read books, but because they buy them to give to other people?—Yes; and this is a book specially adapted for a present.

1053. Specially adapted for a person who wished to spend three guineas on somebody else?—We have plenty of those people.

1054. You subscribed for 75, and then on the next day you had quires?—We decided the next day to bind some copies in leather.

1055. How many quires did you have then?—13.

1056. How many sets would that be?—13 sets.

1057. So that I have to add 13 to the 50?—No, you have to add 13 to the 75.

1058. It does not matter, does it, which it is?—Yes, it does, because the 13 is on the 21st, which is a different date.

1059. You got rid of those or, at any rate, your stock got low at the end of the month?—Yes.

1060. Mr. Justice DARLING: How many copies of the book did you sell altogether?—258 up to February 1908.

1061. Have you sold any since?—No. We have bought them in twos. I should not think we have sold more than six copies since.

Mr. DANIEL WILLIAMS, sworn

Examined by Mr. MONTAGUE LUSH

1062. Are you a bookseller and librarian?—Yes.

1063. I think you carry on your business at Tunbridge Wells?—I do.

1064. How many years' experience have you had?—46.

1065. You read the review, and you read the letter of "Artifex"?—I did. I read the review.

1066. It has been said that "The Times" is an influential newspaper. I do not think my friend has resented that statement. Do you agree with it?—It is an influential newspaper.

1067. Does it influence the sale of books—what they say about the books?—Certainly.

1068. Did you buy copies of this book—"The Letters of Queen Victoria"?—My first order was for 13.

1069. When did you give that order?—Before the book appeared—about the beginning of October.

1070. Did you sell any copies before the 19th October, when the letter appeared in "The Times"?—Yes.

1071. How many?—I sold, I think I am right in saying, 11.

1072. Did you go on selling them as you anticipated after the letter had appeared?—No, I did not.

1073. Can you give us, from your own knowledge of what took place when you were trying to sell the book, your view of what the cause was?—Up to the 16th or 17th, the day the criticism appeared, I was selling it, or I should have sold it, very well indeed, but this certainly damaged the sale of the book, and people came in to complain that the price was too high.

1074. Had any complaint of the high price been made before "The Times'" publication?—No, none whatever.

1075. When the complaints were made after the publication of "The Times," were any complaints made which would enable you to form an opinion as to why the complaints came at all? Can you tell me why the complaints came afterwards about the price?—Because "The Times" had stated so.

1076. What is your reason for saying so. Why do you say, "Because 'The Times' had stated so"?—I say, speaking from personal experience, it is not an extravagant price for a book such as the Queen's Letters; but the public, which take their view in a great measure from "The Times'" and other reviews, were influenced by "The Times" stating that it was an expensive book.

1077. Did you find that that interfered with your selling the book after October 19th?—It did.

1078. How many copies altogether have you sold, I will say since the end of October?—I can tell you

exactly. 13 was my first order, then after that I was careful as to what I did order in numbers, and instead of ordering, as I should have been tempted to order, an additional seven, which I should have got as  $6\frac{1}{2}$ , I ordered by ones and twos as I procured orders for them.

1079. Now it is several months since the end of October. Can you give me the number you sold altogether since the end of October?—Altogether I have sold 19. My first was 13, and another six up to Christmas.

1080. You sold 13 before what we call the libel?—11. I had two on hand.

1081. And you sold six more up to Christmas?—Yes.

1082. We have heard that Christmas is the good season?—It is.

1083. What have you sold since Christmas?—Only one, for a presentation copy.

1084. That is the only book you have been able to sell?—That is the only one since Christmas.

Cross-examined by Mr. ELDON BANKES

1085. Do I understand you to say that you think people were influenced because "The Times" said the book was too dear?—I do.

1086. Not what they said about Mr. Murray, but what they said about the book?—"The Times" in addition to reviewing the book—you are not speaking of the letter of "Artifex"?

1087. No. What do you think it was that affected the people, the review or the letter?—The review was decidedly favourable, but I think it was counteracted by their saying the book was priced too dearly at three guineas.

1088. That was in the review?—At the tail end of the review.

1089. In the middle, to be accurate?—Well, it was mentioned in the review.

1090. So you think these customers of yours were

influenced by what was stated in the review about the price?—Yes.

1091. You come here to tell us that you think people were influenced by what "The Times" said in the review about the price to refrain from buying?—Because people—

1092. Is that your view?—Yes.

1093. Do not let us misunderstand each other. Not that "The Times" said anything derogatory to Mr. Murray?—No.

1094. But that "The Times" said that the book was too dear?—Certainly.

1095. And that is what, in your opinion, influenced the sale?—Certainly.

Re-examined by Mr. MONTAGUE LUSH

1096. Did you read "Artifex's" letter as well?—I did.

1097. Did that, or did that not, in your opinion, influence the sale?—It did influence the sale.

1098. You have told my friend Mr. Bankes that what killed the sale was what was in the review, and not what was in "Artifex's" letter?

Mr. Justice DARLING: No, he did not say "And not what was in 'Artifex's' letter."

Mr. MONTAGUE LUSH: That was to be said afterwards.

Mr. Justice DARLING: I daresay, but that was not put to him.

Mr. ELDON BANKES: I do not want to be misunderstood. I suggested to this gentleman—either in the letter or review—that what influenced the public was the fact that they said the book was too dear.

Mr. Justice DARLING: I know, but Mr. Lush is within his rights in putting the question.

Mr. ELDON BANKES: I am not saying he is not within his rights.

1099. Mr. MONTAGUE LUSH: Did the letter of

"Artifex," in your judgment, play any part in killing the sale?—It damaged the sale.

1100. I mean damaged the sale?—Yes.

1101. You know it is there stated that the cost of producing the book was only 9s. ?—I am not acquainted with publishing, but I should say that was a ridiculous statement.

1102. It is so stated?—I know it is. I read it.

1103. When people made complaints to you—tell me yes or no—what was the nature of the complaints that they made when they would not take the book?—That the price as pointed out by "The Times" was excessive.

Mr. MONTAGUE LUSH: That, my Lord, is the case for the Plaintiffs.

Mr. Justice DARLING: Would you like, Mr. Bankes, to ask the witness anything about that, because I rather thought he did not appreciate what the deduction was exactly as Mr. Lush did?

Mr. ELDON BANKES: I thought I had explained to the witness what my point was, and that he accepted it and agreed with it. If there is any doubt about it, I should like to ask him whether we had agreed with each other.

Mr. Justice DARLING: Certainly.

1104. Mr. ELDON BANKES: (To the Witness) I was not drawing a distinction between the letter of "Artifex" and the review?—I did not think you were.

1105. What I did ask you was this: whether or not in your opinion the effect upon your customers was produced by the fact that "The Times" said that the book was published at too high a price?—That affected the sale.

1106. That is the only thing in either "Artifex's" letter or the review that affected the sale—the fact that they said it was too dear?—The fact that they said it was too dear, yes.

Mr. ELDON BANKES: If your Lordship pleases. Gentlemen of the Jury. You have now heard the case

which is presented to you on behalf of Messrs. Murray, and I am extremely sorry that my learned friend Sir Edward Carson is unable to be here to address you, and it falls to my lot in his absence to put before you as plainly and as shortly, and I hope as fairly both to the Plaintiffs and to my own clients as I can, what the case of "The Times" is with regard to this dispute. May I just remind you what it is we are here trying, and I may ask you to arrange in your heads for yourselves the points which have been presented to you on behalf of the Plaintiffs, and to appreciate how those points bear upon the main question.

Now, Gentlemen, this is an action for libel. Messrs. Murray say that "The Times" have libelled them, and please remember that the only complaint of libel they make is with regard to the letter of "Artifex." There is no complaint made in this action, and therefore no complaint can fairly be made against the review on the ground that that is a libel. It is not a libel. The only libel complained of is the letter of "Artifex." "The Times" say that that letter is not a libel at all, and they say it is not a libel because it does not exceed the limits of fair comment. My Lord will tell you that if the letter does not exceed the limits of fair comment it is not a libel, although it may reflect upon Mr. Murray, because the law is, that every person, whether it is a newspaper or whether it is an individual, is entitled to comment freely and fairly upon any matter of public general interest, and it is no libel, provided he does not exceed the limits of fair criticism. Therefore the main question which you have to decide is: Aye or no, does that letter exceed the limits of fair criticism? In a moment I will say a few words to you as to what has been said amounts to fair criticism, and what may exceed it. That is the first point: Aye or no, does this letter of "Artifex" exceed the limits of fair criticism? If it does, "The Times" are in the wrong. If it does not, Messrs. Murray are in the wrong. A great many other matters have been referred to. What I may call the

history of this letter of "Artifex" has been referred to. The effect of this letter of "Artifex" has been referred to upon the sales; but please remember that all those matters go to damages. They may be material in your view in considering the amount of damages you should award against "The Times" if they are in the wrong, but they have no bearing at all upon the question as to whether the letter itself is or is not a libel.

Now the kind of case that is put before you with regard to the origin and history of this letter is this. The kind of suggestion is that it is a concocted arrangement in the office of "The Times" to have a slap at Messrs. Murray, if I may use that expression, and, of course, it is said for the purpose of getting you to award higher damages against "The Times" if you think this letter is a libel.

Now, Gentlemen, I should like at the outset to tell you exactly what the facts are with regard to the origin and history of this letter, and I will call the witnesses before you in order that that may be fully explained, and you will see exactly how the matter stands. "The Times," as you know, publish a Literary Supplement, and it is in that Literary Supplement that the review appears. On the staff of "The Times" there is employed a gentleman whose duty it is to act as editor of the Literary Supplement. That gentleman's name is Mr. Bruce Richmond, and it is Mr. Bruce Richmond's duty, as editor of the Literary Supplement, to see that the books which are sent in for review shall be sent out to the proper people to be reviewed, and it is his duty when the review comes in to go through and edit it before it is inserted in the newspaper. Mr. Bruce Richmond will tell you that with reference to this book he selected Mr. John Bailey as the reviewer, and it is admitted by Mr. Murray that no better person could have been employed. It is not as though "The Times" had selected a person whom they thought would not do justice to this work of Mr. Murray's. On the other hand, they went to a man who on all hands is admitted

to be the very best man, or as good a man as they could possibly have gone to, and a man who had borne no sort of ill-feeling or malice to Mr. Murray at all. In consequence of a discussion between Mr. Bruce Richmond and Mr. Moberly Bell, who is the manager of "The Times," the question was discussed with Mr. John Bailey as to whether or not the price of this book was not excessive, and whether or not he would think it proper to put into his review some reference to the price. Mr. John Bailey apparently agreed that in his view the price was too high, but he said, "I am not a technical man, and therefore I cannot deal with the actual cost of production, but I will make reference in the review which I send in to the price, and leave a space in which you can insert what you think proper with reference to the actual technical details."

Mr. MONTAGUE LUSH : Of course my friend will call Mr. Bailey ?

Mr. ELDON BANKES : Certainly I propose to call him. I should not think for a moment of opening these things if I were not going to call him. Gentlemen, as a result of that Mr. Bailey sent in his review, and you have now before you a copy of the review. I should like, if you do not mind, to call your attention to the particular place where Mr. John Bailey wrote something, and I will tell you what it was. In the third column at the end of the second paragraph there is this passage : "No one who wants to know what was really happening in England and in Europe between 1837 and 1861 can do without these volumes." Mr. John Bailey in his original manuscript, which any one of you can look at if you like, wrote in the words : "Alas that we should have to add, if he can afford to buy them." Those were the words that Mr. John Bailey himself wrote in, and in the manuscript he left a space, in accordance with the arrangement, in which any technical details with regard to cost and so forth should be inserted. Now Mr. Bruce Richmond discussed the matter with Mr. Moberly Bell, and Mr. Moberly Bell drafted what he thought

would be a proper reference to the price. You have seen the manuscript and what Mr. Moberly Bell wrote, and Mr. Bruce Richmond thought that what Mr. Moberly Bell wrote should be inserted—not all of it, because he cut some out; but he as editor selected what he thought proper to insert and left out the rest, and as a matter of fact he did insert what appears in the middle of the second column: “But a grave mistake has been committed in the method of publication. The book is one that will create very wide interest—in one form or another it will appeal to every reader in the Empire, and it is difficult to overestimate its educational value if it were accessible to the classes who are apt to believe that wisdom lies only in a democracy. But the three volumes which might, one would imagine, have been produced at 10s., and which at a reasonable figure would have sold by hundreds of thousands, are offered to a privileged few at £3 3s.” So that the review as published instead of having “Alas that we should have to add, if he can afford to buy them,” with such technical details as the editor thought fit to insert, has the words that a grave mistake has been committed in the method of publication and the reference to 10s. That is the whole history of it, and I venture to suggest to you that that is a perfectly proper thing to have occurred in any newspaper office. The reviewer is asked as to his opinion on a particular point. He indicates what his view is on the particular point, and leaves a space for the editor to insert anything he may think proper which, of course, is consistent with the view that the reviewer has already indicated. Mr. Bruce Richmond will tell you that he, after having determined to adopt Mr. Moberly Bell’s suggestion, informed Mr. John Bailey of it, and Mr. John Bailey acquiesced in the alteration. Mr. John Bailey says he does not remember that, but that if Mr. Bruce Richmond says he did it he is quite satisfied that it happened. That is how the thing stands, and the review was published in that way. The only persons who knew anything about what had

happened were Mr. Bruce Richmond, Mr. John Bailey, and Mr. Moberly Bell, and so far as they were concerned they had absolutely nothing more to do with the matter and had absolutely nothing to do with the writing of the letter which afterwards appeared under the name of "Artifex."

Now, Gentlemen, let me ask you before I part from this subject to bear in mind what the effect of this review might have been upon purchasers. It is admitted that this review is not a libel. It is admitted that no complaint can be made about the review or the effect which the review had upon sales, and yet my friend has thought it consistent with his position as Counsel for the Plaintiffs to come before you and call evidence which really was confined to the review, or so nearly confined to the review that it was very difficult to detect the difference; and really I suggest to you the evidence of those persons who have come and said that the sale has been affected is the evidence of persons who believe that the sale was affected by the review, and if it was affected by the review that matter never ought to have been brought into this action at all, because if it was affected by the review it was affected by a matter about which Mr. Murray has no right to complain; and therefore you ought never to have had brought to your attention a matter which can only have been introduced in order to confuse your minds on this question. So I ask you, please, first of all to bear in mind what the real history of the alteration of the original manuscript was, and secondly, that if in your judgment that review had any effect upon the sales Mr. Murray has no right whatever to complain of it, because the review is a perfectly legitimate and proper one, and one of which neither he nor anybody else can complain. "The Times" has a right to say that the book might have been produced at 10s. in its opinion, and the only fault, if fault there be at all, which I will discuss with you in a moment, is that they said that Mr. Murray was extortionate and put too

much of the money into his pocket. That is the libel, and that is the only thing about which he can complain ; but that had no effect upon the buyer of the book. What the buyer of the book was affected by, if at all, was the fact that "The Times" said it was published at too high a price—a thing which they had an absolute right to say, and of which no person can possibly complain.

Mr. Justice DARLING : When you say that nobody was affected you mean that to be argument and not to be a statement of the evidence.

Mr. ELDON BANKES : No ; I am not dealing with the evidence now at all. I think I said : "If anybody was affected by the review." At any rate that is what I intended to say.

Mr. MONTAGUE LUSH : With regard to my friend's statement, although to say that a book is too high-priced is not a libel, to state as a fact that it only cost 9s. to produce it might be.

Mr. Justice DARLING : Mr. Banks is perfectly right in this. He is dealing now with the review, and he says that if he limits it to that, the review, whatever it may have done to the book, does not entitle you to any damages, if only for this very simple reason, that you do not allege it does. You do not complain of the review as a libel.

Mr. MONTAGUE LUSH : No, my Lord.

Mr. ELDON BANKES : Now, Gentlemen, let me pass from that to the letter of "Artifex"—because if this thing is material at all, and I should not have thought it was, but my friend thinks it is, and therefore I must deal with it—if this history of the origin of the letter of "Artifex" is material, it is material as showing that there was some concerted plan between the people who are responsible for the review and the people who are responsible for the letter of "Artifex," that the one should be invited by the other—if I may use that expression. Now, the history of the letters of "Artifex" is this. One of them, it has been proved, was written

by Mr. Ross—the second one. The first one was also written by Mr. Ross, or typed, and they both came into existence under practically the same circumstances. Mr. Hooper is the manager of "The Times" Book Club. Mr. Hooper has nothing to do with the literary part of "The Times" at all. Of course he is the manager of the book club, and the book club is "The Times'" property, and Mr. Hooper is the manager of the book club ; but he has absolutely nothing to do with the literary part of "The Times," and he has no more to do with the reviews, or the making of the reviews, than you or I. He reads the reviews in the same way as you or I would, as being the production of the literary staff of "The Times," and those employed by "The Times." Mr. Hooper sees this review. He does not know whether it was the language of the original reviewer, or whose language it was. All he sees is what you and I see, and that is the review as it appears in the Literary Supplement, and seeing this reference to the price, he then asks Mr. Ross to write a letter about it, and supplies him with the materials. Mr. Hooper has some technical knowledge of the price of production, and he supplies Mr. Ross with the materials. The letter is written. It is signed "Artifex," and he sends it with a covering letter of his own, which we have not got, and the person whose duty it is to mark these things, marks Mr. Hooper's name upon it, and with the name upon it it goes before the editor, and the editor passes it, and then it is inserted. That is the whole origin and history of this publication, and the people who are responsible for producing the letter by "Artifex" had nothing in the world to do with the review, knew nothing about who the reviewer was, or how these words came to be inserted ; and so far as any connection between the two sets of persons is concerned there is absolutely none.

Now, Gentlemen, I have given you the history of the origin of that letter, and it is the letter only that is complained of. Before I come to the letter I must ask

you to bear this in mind. My friend has said to you, and I quite agree with him, that it would not be right for either side in this case to attempt to try out the merits of the book war—as to whether or not “The Times” were right in their view, or whether the publishers were right in their view; but you know the contentions on the one side and on the other. The contention of “The Times” was that the publishers were publishing books at exorbitant prices. The publishers, on the other side, were contending that “The Times” were cooking accounts and presenting absolutely inaccurate views, and so the matter went on; and we know that the publishers associated themselves into an Association and the booksellers associated themselves into an Institution, and that the booksellers and the publishers were on the one side in this war, and that “The Times” took the other side. I want you to bear this in mind, because several persons have come before you whose interests are very much mixed up in this dispute. You have heard it said that the booksellers’ trade has been very much affected by “The Times.” Those people put it generally. What they mean by their business being very much affected by “The Times” is this. They mean that the business has been affected by the success of “The Times” Book Club, because so many people get books from “The Times” Book Club that their business as booksellers has been affected. That is what those gentlemen mean when they say that their business has been affected by “The Times.” It is not by what “The Times” has written or by what “The Times” has said, but it is because of “The Times” Book Club, which carries on an extensive business, as they say, in competition with them. Now, Gentlemen, you have these rival forces; you have the publishers and booksellers on the one side, and “The Times” on the other side. We are not trying the merits of the dispute, although Mr. Murray once or twice entered into a discussion which I think did go into the question of merit, but I did not follow it with

him, and he was allowed to say what he chose to you about that ; but I do want you to bear this in mind. It has been called a book war ; it was in one sense a war in which hard language was used by both sides, and Mr. Murray admits that he himself entered into that war, and he himself used hard language. Gentlemen, this letter of which complaint is made is only an incident of the war, and when you come to consider this case generally you will have to take that into consideration, because if two people are engaged in warfare, whatever kind it be, or whatever weapons they use, if they are both engaged in using those weapons it seems to me rather odd that at the moment it suits his particular fancy one of them should desist from the warfare and say, " Now I have been using these weapons all along, and so have you, but I am not going on any longer, and I am going to ask a jury now to give me damages because you keep on using the weapons which I have been using so long as it suited me, but it suits me no longer, and now I want damages from the jury." Gentlemen, you must also remember other incidents in this warfare, because I shall ask you on behalf of "The Times" to say that they have behaved to their opponents with extraordinary fairness. There is some sympathiser behind who does not agree with me.

Mr. Justice DARLING : I have not the least idea who it is that interrupted, but no one must give any indication that he either agrees or does not agree with the remarks of the learned Counsel.

Mr. ELDON BANKES : I am addressing you, Gentlemen, and not the gentleman at the back of the court, and I think I shall appeal to your sense of fairness, and to the general view you take of this case in the observations I am going to make in this regard. Mr. Murray and those associated with him have not spared "The Times." They have done everything they possibly could to injure and damage "The Times" and to render it impossible for them to carry on their business unless they accepted Mr. Murray's terms and the terms of those

associated with him. We know the rock on which they split. We know it was on the question as to whether "The Times" were allowed to sell books which they had bought at full price as second-hand within six months. That is the whole point; and because they would not agree to the publishers' suggestions about that—and I think the publishers' suggestions were instigated by the booksellers—what I suggest to you is the most rigorous boycott has been carried out by the publishers. Let us see what they have done. Mr. Murray admits it. The first step was to say: "None of us publishers will sell to you—'The Times'—books at trade prices; if you want books you must buy them at the full published price." Of course the result would be that "The Times" would have to carry on their business without the possibility of making any profit, because they would have to give the full published price for every book. Then you know they were not content with that, because they said: "Not only will we say that to you, but we will bind the booksellers down with whom we deal to take the same line with you." That was the first step; but in spite of that "The Times" Book Club went on, and the next step was: "We will not even sell to you at the full prices: we will not let you have a book which we publish at any price, and we will bind the booksellers down to treat you on the same terms"—and they did that, knowing that "The Times" have very many subscribers to their Book Club with whom they had entered into yearly contracts at that time to supply them with books on certain terms. The publishers deliberately took every step that they could conceivably think of to prevent "The Times" getting a single book, and to disable them from carrying out the contracts with their subscribers. If that is not a rigorous boycott I do not know what is. But Mr. Murray—and I accept this from him—disclaims personal responsibility for another step which was taken, but a step which I think you cannot ignore. When it was found that a newspaper dared to

take a view in opposition to the publishers, and in favour of "The Times," all advertisements were stopped. It was told that it would no longer get any advertisements from the publishers unless it was content that its columns should contain only matter favourable to the publishers. You know when a war is carried on with weapons like that you cannot expect that you shall be treated yourselves with kid gloves. But there is another matter that I want to refer to. All the advertisements of these publishers were withheld from "The Times." Not one single advertisement of any of these people was given to "The Times." You must know from your experience how largely a newspaper depends for its success, and the possibility of being carried on at all, upon the advertisements which it receives. A large branch of the advertising was cut off from this paper entirely because they would not agree to the publishers' terms. The publishers were entitled to do it, but you cannot shut your eyes to the kind of warfare that was being carried on against "The Times." You remember also Mr. Murray's particular form of warfare, which I call carrying the war into the enemy's camp—the use which he made of the space in the columns of "The Times" that he had entered into a contract with "The Times." Of course, that contract was to enable him to advertise his books there, and "The Times," I venture to think, would have been perfectly justified in saying to Mr. Murray: "No; if you do not want to advertise books here, but only want to advertise that people should not deal with us, but should deal elsewhere, our space was not let to you for that purpose." But no. Whatever he desired to put there was put there, and it may be that Mr. Moberly Bell told him he did not think it would do him much good; but the point is that we did not take the line, as we were absolutely entitled to, and refuse to insert this indictment of ourselves in our own columns, because Mr. Murray chose to do it. What was that indictment? It was an invitation to everybody who wanted to know

anything about Messrs. Murray's book, or about this book war, to apply to him, and he, gratis, would supply the explanation as to why he had taken this line about the advertisements. We know what he did say. He sent a pamphlet and a number of other documents, which contain, if not the most bitter attack upon "The Times," at any rate as bitter an attack as Mr. Murray could probably lay his hands upon at the moment; and therefore we do find that it was a war. We are not asking you to say which side was right or which side was wrong, but you cannot shut your eyes, and my friend cannot ask you to shut your eyes, by simply passing it aside and saying: We cannot say who was right. You cannot shut your eyes to the methods which were being adopted against "The Times" in order to bring them to their knees and force them to accept the terms which were suggested to them.

Now, Gentlemen, there is another matter in this connection that I want you to bear in mind, because I submit to you that it does show that "The Times" were acting fairly towards these persons, who were bitterly opposing them, and I say it in two regards. I appeal to the fairness of one member of the Publishers' Association, who desired publicly to express his appreciation of the fairness of "The Times" in this regard. You remember I read to you his letter—the letter of Mr. Lane. At the end of a long letter, in which he severely attacks "The Times," he says—I am giving it to you from memory—"I think in fairness I ought to acknowledge publicly your frankness in opening your columns freely to all correspondence from your opponents, and in so fairly and impartially reviewing the books sent in to you." It is particularly in regard to that question of reviewing that I desire your attention for a moment. These publishers, who were doing everything they could to injure "The Times," were yet sending in their books to be reviewed, and we know from the very candid statements of some of the witnesses in the box the value to the publisher of a good

review. It was in the power of "The Times," if they had been maliciously disposed, to have sent these books to people who were not competent to review them, the result of which would have been very incomplete or very ineffectual. But no. From first to last they dealt with those reviews absolutely fairly and absolutely impartially.

Mr. Justice DARLING: I think you ought not to omit this, that if they did that it would inevitably lower "The Times" itself and make it practically a valueless thing as a literary paper, and it may well have been thought that nobody would then go on buying it.

Mr. ELDON BANKES: My Lord's observation is quite deserved, and I was going to deal with it; but you will remember, of course, that these reviews in "The Times" appear in the Literary Supplement, and the Literary Supplement is a thing which can be discontinued or continued at the will of the proprietors. But it was continued. I am not saying that it is not a valuable part of the paper, for a moment; but what I am saying is this, that I will call your attention to Mr. Lane's own language, because that is the language of the publisher himself. He says, "In conclusion, I consider it but just to you, sir, to make public acknowledgment of your fairness in printing your opponents' letters, and in continuing to review impartially the books of publishers which are in disagreement with you upon the question of the attitude of your Book Club." Of course it was not all the publishers, but it was some of the publishers, that were taking this line. Now I want to say one further word upon it, and then I will pass from this subject. Attention has been called to the fact that in the reviews there is a footnote at the bottom dealing with this question. I do not know why it was referred to, but if you have not already looked at it, would you mind looking at it now, because I submit, having regard to what was happening, and the position in which these publishers were putting "The Times," that it was only a perfectly proper and fair business

announcement. You see this is a review of a book of one of the people who refused to supply the book to "The Times" at any price. Therefore the publishers of "The Times" put in this notice: "The publishers of this book decline to supply 'The Times' Book Club with copies on ordinary trade terms, and subscribers who would co-operate with 'The Times' to defeat the Publishers' Trust may effectively do so by refraining from ordering the book so far as possible until it is included in 'The Times' monthly catalogue." That announcement is placed, as you will see, at the end of each review of the book published by the publisher who takes this attitude towards "The Times," and who renders it so difficult—in some cases practically impossible—to get the book at all.

Now, Gentlemen, that is the position occupied by the respective parties down to the time when this article appeared, and I respectfully ask you to say that there is nothing in the history of this war which can by any possibility indicate that there was any malicious feeling towards Mr. Murray personally, or any desire to do Mr. Murray personally any harm. On the contrary, I submit the general attitude of "The Times" is clearly indicated as being that they were taking part in this discussion, they were using language which was perhaps strong towards the publishers generally, equally the publishers were using strong language towards them, but that "The Times" were in that discussion acting fairly, and apart from that discussion acting fairly, and there is no ground for suggesting or imputing any malice towards Mr. Murray personally.

Now, Gentlemen, I will go to the letter itself, and of course you must read this letter in reference to what has occurred previously, and in reference to what is the known use of certain language. This letter has reference to the cost of production, and as Mr. Murray has told you, the cost of production means the cost of producing it, that is to say, the paper, the printing, and the binding—matters which in his agreement he has

indicated by the compendious expression, "invoice price." He says: "The cost shall be reckoned as the invoice cost," and when you are speaking of cost in that sense you speak of profit as gross profit, because, of course, if you are speaking of cost as total inclusive cost you would include, as my friend suggests, establishment charges and so forth; but when you are talking of cost, meaning invoice cost, then the profits which you speak about are not the net profits but the gross profits. Now the writer of this letter never spoke of anything else. He spoke of the cost, meaning, as Mr. Murray means, the invoice cost, and he spoke of the profits, meaning, as everybody does mean, and must mean in such a connection, the gross profits, and when he speaks of the profits which come to Mr. Murray, he does not mean the net profits, but he means the gross profits, which, of course, include, and from which must be deducted, the establishment expenses and so forth, in order to get at the net profit if and when you come to speak of net profit. Before I read this letter to you may I call your attention to what has been said so often in these courts as to what constitutes fair comment?

Mr. Justice DARLING: Before you go into that, Mr. Banks, that is a point which I have to decide. Do you, Mr. Lush, contest that the letter written was dealing with something which was a matter of public interest and importance, or do you admit that.

Mr. MONTAGUE LUSH: I cannot admit that. I submit it is not. Of course, if it were a comment on a book it would be, but what it is a comment on, is on the amount of profit that an individual publisher thinks fit to make.

Mr. Justice DARLING: I shall have to decide that.

Mr. MONTAGUE LUSH: Yes, my Lord.

Mr. Justice DARLING: So that your argument, Mr. Banks, will not begin except upon the assumption that I decide it is a matter of public interest and importance. You may assume that merely for the purposes

of argument, but I have not decided it yet. I shall have to hear argument about it. I will decide it at the last thing when I sum up.

Mr. ELDON BANKES: If your Lordship pleases. I was not going to address you, Gentlemen, upon a matter which is for my Lord, because it is for my Lord to deal with the question of whether the matter is of public general interest. I think that is right.

Mr. MONTAGUE LUSH: That is so.

Mr. ELDON BANKES: But, Gentlemen, I am addressing you merely on the thing assuming, of course, it is a matter upon which comment is permissible. The case that is always referred to is the case of *Merivale v. Carson* (20 Queen's Bench Division, page 275), and the importance of this case is that it indicates very clearly the extent to which a person may go and criticise it. This is quite clearly established. A person must not invent facts in order to criticise them. He must get his facts right, and then, having got his facts right, he may criticise them freely, and it does not prevent it being fair criticism that the Jury may think his language is exaggerated or that they do not agree with it. The question is: If he has his facts right, is the language such that any fair-minded man would use who takes a particular view upon this particular question. This is what Lord Esher says: "If the language is no more than fair, honest, independent, bold, even exaggerated, criticism, then your verdict will be for the Defendants." Then he goes on: "He gives a very wide limit, and, I think, rightly. Mere exaggeration, or even gross exaggeration, would not make the comment unfair. However wrong the opinion expressed may be in point of truth, or however prejudiced the writer, it may still be within the prescribed limit. The question which the Jury must consider is this—Would any fair man, however prejudiced he may be, however exaggerated or obstinate his views, have said that which this criticism has said of the work which is criticised."

Now, Gentlemen, the real point for you is this. First

of all, are the facts as stated by the writer substantially true, and if they are substantially true, it is not unfair criticism to say that the price charged is extortionate. Of course, the criticism cannot be fair unless the facts are substantially true, but if the facts are substantially true it is not unfair criticism to say that those prices are extortionate. Now let me, first of all, if I may, call your attention to Mr. Murray's own figures, because we cannot deal here with pure estimates. The writer, of course, at the time he wrote this was writing upon an estimate which he had made which might or might not turn out to be right. The question is : Has his estimate turned out to be substantially right ? and you can only ascertain that by finding out what Mr. Murray's figures actually are. Now I confess it does seem to me rather strange that coming here and knowing what the real point of this case is, namely, what were the actual receipts, and what was the actual expenditure in regard to this book, that Mr. Murray should have come so incompletely equipped as he was. It is really most inconceivable that he should not have had an accountant to go through his books and take out the actual figures, because if the actual figures were taken out you would be able to say absolutely whether the estimate of this writer was or was not substantially right, but unfortunately Mr. Murray has only gone part of the way. He has only given us part of the figures, and he has left us to form an estimate as to some of them, and I will deal with you, if you will allow me, with the actual figures ; I will deal with the figures which it is necessary to estimate ; and I will ask you to say that this writer's estimate was substantially accurate when he said that the cost of this book was 13s., and that the profit, which is the gross profit, was 32s.

Mr. MONTAGUE LUSH : My Lord, I do not know what rule your Lordship indicated yesterday, but I confess I cannot see how it is open on this defence of my friend's to do this. Here is an article which I agree with my friend is only fair comment if the facts are true. It

was open to them to plead that the facts they stated were true, and because they did not state it the Master disallowed some Interrogatories on the ground that they did not plead the truth of their statement. I submit it is not competent for the Defendants in a case like this, when they have not ventured to justify the facts, now to go into evidence to prove that the facts they state are true.

Mr. Justice DARLING : One question here is the question of damages. Mr. Murray may say, as is always said in a case of libel, once prove a libel and damage may be inferred at large. He may say, I rely upon the various words in this as giving me a right to damage because of the general injury which it will inflict upon my business, but he may also say—and I understand that is one reason why these figures were given in this particular case—I should over this very book have made such and such a sum of money if you had not written your libel. Then because he may say that in order to show damage over this very book, they, it seems to me, may go into the question of these costs, and so on, to show that that damage he could not have sustained over this very book, or that he would have sustained it to a less amount.

Mr. MONTAGUE LUSH : My friend's evidence would be to enlarge the damage, because if the cost of the book was as heavy as Mr. Murray said it was his profit would be very small; but my learned friend, Mr. Bankes, wants to show that his profit was very large. My friend cannot be wanting to enhance the damage.

Mr. Justice DARLING : If you want to criticise it for the purpose of showing that the profit which he ultimately made was very large, that goes to decrease the damages over this very book.

Mr. MONTAGUE LUSH : To show that we suffered a great loss ?

Mr. Justice DARLING : No, to show that his profit as a matter of fact was large when all was done. The largeness of the profit shows that the effect of the libel

was small, and therefore if there are to be damages they should be smaller damages than otherwise.

Mr. MONTAGUE LUSH : I am afraid I have not conveyed my meaning to your Lordship. I have no doubt it is my fault. If "The Times" libel caused a loss on the sale of  $x$  books, whatever  $x$  may be, the larger profit on each book, or, in other words, the smaller the cost of producing each book, the greater would be the damage caused by  $x$  books not being sold.

Mr. Justice DARLING : Clearly.

Mr. MONTAGUE LUSH : My learned friend Mr. Bankes wants to show that. He wants to show that our damage was very large, because incidentally he wants to show that his facts in "Artifex's" letter are true.

Mr. Justice DARLING : If he shows that your damages are very large, how can I stop him ?

Mr. MONTAGUE LUSH : I prefer to do without his assistance, because the real object is, looking at it in substance, an attempt on the part of the Defendants to justify the truth of "Artifex's" letter.

Mr. Justice DARLING : You may leave it to me to tell the Jury that it must not be allowed to have any such effect. If the effect of it is, as you say, to increase the damage, I cannot shut it out because it would increase the damages.

Mr. MONTAGUE LUSH : On that ground I will accept all benefits.

Mr. ELDON BANKES : I wonder at my friend's interruption, because when you plead fair comment the plea involves a statement that the facts upon which you are commenting are correct, and nobody has ever heard of a plea of justification except in the sense of justifying the defamatory statement. We have never justified in that sense, but what we have said, and what we do say, is that "Artifex's" statements of the facts about the price are substantially accurate, and that we were fairly commenting upon those facts when we said the price was extortionate. That is the position.

Now, Gentlemen, I want to go through with you, if

I may, these figures of Mr. Murray's. I know you have taken some interest in them—at least some of you, at any rate—and you are already possessed of the point I want to make, but I want to summarise it for you. In order to arrive at the profit one has to find out the actual number of copies sold and the price realised, and for this purpose I think you will agree with me that it is right to take the first edition. We are only now taking the 10,200. The 10,200 have been dealt with in this way. 158 have been given away as presentation copies. 9,165 were sold up to that date in March, leaving 877 on hand. That gives you the total of 10,200. Now what have the receipts been, according to Mr. Murray's own figures? He has received £15,149, plus £3,822. He has actually received £18,971, and he has spent £7,060. If you take the one from the other you will find there is a balance of £11,911. I am now taking the actual figures. If you divide that £11,911 by the 9,165 copies you will find that it works out at 26s. a copy. So that upon his sale down to that date in March he has received 26s. a copy profit.

Mr. Justice DARLING: When you say "profit" you mean gross profit?

Mr. ELDON BANKES: Yes, my Lord.

Mr. Justice DARLING: Not net profit?

Mr. ELDON BANKES: No, my Lord.

Mr. MONTAGUE LUSH: And the profit is divisible between three people.

Mr. ELDON BANKES: Yes. I am not saying who gets it for the moment, but the gross profit per set upon these figures I have given you is 26s. a set. We have said that it is 32s. a set, and therefore there is a difference between us of 6s. Now certain figures have to be estimated and certain allowances have to be made which are not in those figures you have already got. I hope I make this point clear to you. It seems clear to me, and I hope I shall make it clear to you. It takes an additional £500 to increase the profit by 1s. per set; so you see I want six times £500, that is £3,000, to in-

crease the profit as shown on these figures of Mr. Murray's from 26s. to 32s. Now, in order to get that £3,000 there are certain matters to be considered, and I am sorry we have to estimate them, because, of course, Mr. Murray could have given us the actual figures, but I can tell you what they are. There is the value of the unsold copies. That is Item No. 1. Then Item No. 2 is the point of 25 copies for 24. You understand what I mean by that. Then Item No. 3 is the 10 per cent. which he, as between himself and the author, was allowed to charge upon sales. Then there is the 5 per cent. discount which he was allowed to take upon his payments. That is Item No. 4. Then Item No. 5 is the question of the value of the plant.

Mr. Justice DARLING : That is the plates.

Mr. ELDON BANKES : Yes, my Lord. Now, Gentlemen, I confidently anticipate that taking any fair estimate you choose to take of those items they will come to more than the £3,000 necessary to bring the gross profit from 26s. up to 32s. I must say a word or two about the plant. Mr. Murray may keep his books in any way he chooses, and I should be the last person to suggest that Mr. Murray does not keep them in a way which he thinks is proper and right, but that plant is a valuable asset. It may vary as an asset, but there is no doubt of its value ; and what do you think the income-tax man would say to Mr. Murray's balance sheet in which he showed his profits without taking into account the value of this very considerable asset of plant ? I do not know, I am sure, but I suggest to you, as business men, that you cannot make a proper balance sheet of Mr. Murray's business without including as an asset the value of the plant ; and if that is so in arriving at the profits, it is absolutely so when you are considering the cost of any edition of a book, because what we are here considering is the cost of the first edition ; and I respectfully submit to you that no business man when he was endeavouring to find out the cost of a first edition of a book would debit that edition with the whole cost

of the plant. He never would think of doing it, but whether you treat it in this way, that the first edition ought not to be debited with the whole cost of the plant, or whether you treat it as though the plant is of value, and therefore must be valued in arriving at the cost of the first edition, I do not mind, because you will remember in that figure of £7,060, which is Mr. Murray's cost, he has included the whole cost of this plant, which amounts to something like £2,030. Now let us see what value this has. As a matter of fact this plant, or a portion of it, has already been sold for £500—I do not mean sold out-and-out, so that Mr. Murray has lost it for good, but in the authors' ledger there is this entry : " Sales of plates and prints, £526," and on the other side we have : " Cost of plates and prints, £244 ; Editors' two-thirds profit, £187 ; Mr. Murray's one-third, £93." I need not go into the distribution of it. I am only calling your attention to the fact that already this item has realised £526, and therefore it is not fair to debit this first edition with the whole of that amount, having regard to the fact that he has already got back a very considerable proportion of the total cost. The whole of the cost of the plant is included in the £7,060. This figure of £500 does not appear on the other side at all. So that I will ask you when I come to figures to include a fairly considerable item for either the value of the plant, if you choose to put it in that way, or for a writing out of the total expenditure a proportion of the value of the plant, whichever way from an accountant's point of view you choose to do it.

(Adjourned to to-morrow morning at 10.30.)

## THIRD DAY

Mr. ELDON BANKES: May it please your Lordship, Gentlemen of the Jury. If you remember when the Court adjourned last night I was going into this question of cost at some length, because we must deal with this practically on the evidence we have obtained from Mr. Murray. You will remember that it is Mr. Murray's cost that we are dealing with, and I was indicating to you the points upon which I suggest to you Mr. Murray's figures, upon his own statement, require adjusting in order that you may arrive at what the actual cost of this edition was. I am not sure whether I put it in five or six points, but I believe there were five points which I indicated as the particular points in which the account as made up required some adjustment. Now you will remember, also, I told you that in order to arrive at what the real difference was between the total cost of production and the price at which it was offered, I should have to satisfy you that these figures that I have given you in the tables require adjusting to the extent of some £3,000, because, as I pointed out to you, you remember, it requires £500 to put 1s. on to each copy, and upon which the figures which I gave you yesterday, Mr. Murray's accounts, as made up, show the difference between the two dates as 26s. a set. You remember our letter says 32s.

Now, Gentlemen, I will first of all deal with the further receipts of Mr. Murray from the unsold copies, and the value that ought to be placed upon the copies which are still unsold. Now, you remember the accounts as shown to us by Mr. Murray were made up to the 27th

March, and since the 27th March we now know that he has sold 112 more copies, so that in order to adjust the two accounts you have to arrive at the price which he received for those 112 copies, and you have to estimate the value of the difference between the 112 and the 877, which is 765. Now, I repeat again I regret that this matter should be allowed to rest in estimate at all, because Mr. Murray must have it in his books, and he does not give us the information. He must have, and has got it in his books, the actual price he received for those 112 copies. All he has told us about them is that two of them were sold at special prices, those appear in his special sales book, and those two sets were each sold at two guineas, so that we get the first item, four guineas, that we know of. Then, for the balance, that is 110, we know that he has told us they would be sold at the trade price. Now the trade price is £2 12s. 6d., but there may be discounts, and, therefore, I am desirous of giving you as far as I can a fair estimate. Therefore you have four guineas and 110 copies, if I may put it at £2 10s., instead of £2 12s. 6d.; that will give you four guineas and £275. Those are the two items which I ask you to accept, partly as a statement of fact and partly as a fair estimate based on Mr. Murray's own evidence. Then, of course, we have to deal with the value of the 765 which he has got unsold. Now you remember what he said about that. He said it was very difficult to put an estimate upon them, that Messrs. W. H. Smith & Sons had begun to sell them as second-hand, and, therefore, I am not asking you to assume that he can or will receive for those copies the full trade price. But I do ask you to say that I am not under-estimating, if I ask you to assume that those 765 copies are worth £700, that is under £1 a set. So that the third figure I ask you to take is £700. Then, Gentlemen, we come to the next item. You know Mr. Murray, as between himself and the authors, is entitled to one copy in every 24, that is to say, he is entitled to treat 25 as 24, and in some cases, as he has told us, he would make a profit of that ad-

ditional copy to the purchaser, that is only in cases in which he is selling in large numbers. Now there is this further correction to make. I desire, as far as I can, to be perfectly fair in this matter, but it appears from Mr. Murray's statement that he has not treated the large sales to Messrs. W. H. Smith & Sons and the other firms we mentioned as 25 as 24 ; he has deducted the actual copies ; but we do find from his authors' ledger that he has treated 4,800 copies in that way, therefore, with regard to 4,800 copies, he has been treating them as copies in regard to each 25, of which he has a right to one copy, that is 200 copies. Therefore Mr. Murray has 200 copies to deal with either by giving them to the persons who bought in large quantities, or, as he himself admits, in selling them at the agreed prices in cases where he did not require to give them away. Now, Gentlemen, we have to deal with these 200 copies, and here again I regret that Mr. Murray has not given you and me the opportunity of saying how many of those 200 copies he has actually sold. Again I must make an estimate, but I respectfully submit to you, Gentlemen, that it is a fair estimate to say that he has given away half and sold half. I can deal with it as an estimate, but upon the evidence Mr. Murray himself gave you, I submit, that is quite a fair way to deal with it. You remember what he said, and I will read it to you, so that there can be no doubt about it. I said to him : " Can you tell me from your books how many of the difference between the 3,331 and the 3,198 you have, in fact, sold and received the money for ?—It would be a very difficult thing to do. I have not got the figures. You may take it that all those copies were sold. I very much doubt if they were not all sold, with the exception of possibly one or two." So that Mr. Murray is willing to allow me to assume that they were all sold, and then he goes on to say—I say to him : " I have the details of your sales, and with the exception of those five firms that I gave you, the bulk of the sales are in small quantities. I have your town subscription list before me.

For instance, if you sold a man 12 copies, you would not sell them to him at the rate of 25 for 24, would you? —It is possible that some man in a few days might come and ask to make up his number, and I do not hold to the rule so very tight as that. I might allow some of these men to make up their numbers to 25, in order to get the odd copy. Q. May I take it that apart from such arrangement as that in the cases where you sold less than 25 books you would not have sold 25 for 24?—There are some cases where I do not sell 25 for 24. Q. In those cases you have, in fact, received £2 12s. 6d. per copy?—Yes, probably in most cases." So, that, Gentlemen, you see, I think, that I am fair. This is Mr. Murray and his own evidence, and I am taking if for the purpose of this calculation, and putting before you that it is fair to assume that at any rate he sold half those 200 copies which he is entitled to take as between himself and the authors, and if you take those 100 copies he says £2 12s. 6d., but, again, if I take those copies at £2 10s. instead of £2 12s. 6d., which would allow for all discounts, I get a further figure, you see, of £250. Then, Gentlemen, we have to deal with the further item which arises in connection with those 25 as 24, that is, between himself and the authors he was entitled to give a 10 per cent. discount, and he was entitled to treat all sales as between himself and the authors as though he had given the 10 per cent. discount. Now the total sales of these copies come to £1,100, and, therefore, of course, the 10 per cent. discount would be £110. Again, I regret Mr. Murray did not tell us what he did give in this discount, but I think I am only taking a fair estimate when I say that of that total £1,100 made up by 10 per cent. discount I am entitled to assume that Mr. Murray received £500; that means to say he did not give discount to the extent of the whole £1,100, but he only gave it for £500. Then Gentlemen, the last item is this: Mr. Murray, again, as between himself and the authors, is entitled to charge against them the full payment he made; but, again, he has told us that

he does take a 5 per cent. discount. Again I will refer you to what he said. I say to him: "Now on the other side of the account there is another adjustment required, because as between you and the author you were entitled to have 5 per cent. upon all your payments?"—Yes. Q. As a matter of fact you did receive that 5 per cent.?—Not on all. Q. On the bulk of them?—On the bulk of them." Now, therefore, you know the total payments were £7,060. 5 per cent. upon that would be £350, and for my estimate I have taken £300. Now if you will add those figures, which I respectfully submit to you are a fair estimate, you arrive at £2,029, if my arithmetic is right. There are the four guineas, £275, £700, £250, £500, and £300. So that, Gentlemen, you will see, if I am right, if you accept this view, upon all these matters, I am upon firm ground, because Mr. Murray has admitted that his account requires adjustment upon all these points. So that if my estimate of amount is right I am justified in asking you to say I am liberally treating Mr. Murray in estimating those items at £2,029. Now there only remains this question of cost, and I agree that Mr. Murray will not accept the view that in arriving at the cost of an edition you ought not to make any allowance for the plant. You remember what the main items of that are; they are the plates and the amanuenses. The plates amount to £1,700 odd, and the amanuenses to £900. Those two figures come together to £2,600. You remember that we gave the figures to him of £3,020, and that includes a number of other small items, but for the purpose of argument I will take the two main items. Of course this is a matter which you have to decide, because this is a matter you will have to deal with on your business experience, and the way I put it to you is this. In the publication of an edition there is a certain amount of expenditure which relates to that edition merely. There is the cost of the printing, the binding, and the paper, and so forth. That expenditure, of course, relates to that edition merely; but of course there is

expenditure which is not exhausted by that edition. There is the cost of the plates, and there is the cost of such work as the work done by the amanuenses. That is the permanent work, and it remains available not only for the purpose of producing a second edition, but it remains available for the sales of prints to anybody who desires to purchase those prints.

Mr. MONTAGUE LUSH : With respect, that is not the evidence. The plant does not remain available for anybody.

Mr. ELDON BANKES : May I read you the evidence about it ?

Mr. Justice DARLING : I have thought of it in this way, the copyright in this is not Mr. Murray's ; the copyright, as we know—there is no harm in mentioning it, because it has been given in evidence—belongs to His Majesty.

Mr. ELDON BANKES : Gentlemen, here again let us be quite clear that our minds are on the same point. The copyright, we agree, is either the authors' or His Majesty the King's ; for my purpose it does not matter which. The copyright, it is agreed, is not in Mr. Murray, but the sole right of reproduction and the sole right of publishing is in Mr. Murray, and that is an item of great value.

Mr. Justice DARLING : The sole right of publishing this edition.

Mr. ELDON BANKES : No, my Lord.

Mr. Justice DARLING : Does the agreement say that if any subsequent edition is to be published Mr. Murray shall publish it ?

Mr. ELDON BANKES : I will refer to the agreement. It is general. It is the sole right of publication. Of course one knows that means all rights of publication.

The FOREMAN of the JURY : May I put a question to the learned Counsel ?

Mr. Justice DARLING : I think you had better allow Mr. Banks to clear up this point first.

Mr. ELDON BANKES: Let me read to you the agreement.

Mr. Justice DARLING: Here it is, Clause 10.

Mr. ELDON BANKES: It is Clauses 9, 10, and 11. Clause 9 is: "As soon as the publisher has liberty to do so he shall enter into negotiations with some American firm of good repute with the view of having the book copyrighted and published in the United States on terms subject to the approval of the authors, and under the payment of royalty by the said American firm on the advertised price of all copies sold. Such royalties shall be paid to the publisher, and he will hand over to the authors three-fourths of the sums received by him from this source." Then 10: "The copyright of the work shall remain the property of the authors, but the rights of publication shall remain vested in the publisher so long as he faithfully acts up to this understanding." Clause 11: "The rights of translation shall vest in the authors, and any sums received for this shall be paid to them without reduction." That has reference to the ownership of the copyright, and to the right of reproduction, but there is, of course, in reference to this item of plant, Clause 6, which is very material, and I must read that: "The proceeds of sale shall be accounted for as nearly as possible at the actual sums received by the publisher from the booksellers after making all trade discounts and allowances, that is to say, on the assumption that the book is to be published at the net price. Copies shall be reckoned five-sixths of the published price, 25 as 24 if more than 10s. 6d., or 13 copies as 12, if the published price be 10s. 6d., or less, less 10 per cent. The above terms shall not apply to special sales, that is to say, quotations made for large numbers for special cases, or to remainders, Colonial or American sales, or to sales of plates and rights. These shall not be added, but shall be made a particular note of and accounted for exactly what it yields."

Now, Gentlemen, these are the provisions of the agreement so far as material. Now let me call attention

to what Mr. Murray said about it. There are three pages of the shorthand note in which reference is made to this matter. At page 32, Question 161, I say : "The third point is this. Of course, when you produce a book of this kind there is a considerable amount of expenditure in what is known as plant ?—I do not deal in plant. Q. The plates, for instance ?—I do not know what you mean. Q. I mean plates that are prepared for the illustrations ?—The blocks and plates ? Q. Yes. They are available for any future edition ?—Yes. Q. Or they may be sold to a foreign or Colonial publisher ?—Yes, copies. We are not likely to part with the originals. Q. At any rate, they are something that is valuable which remains in your custody and possession ?—Certainly. Q. I notice in your agreement there is a provision as to that : 'The above terms shall not apply to special sales, *i.e.* quotations made for large numbers in special cases or to remainders, Colonial or American sales, or the sales of plates or rights' ?—Yes." Then I go to another point.

Mr. Justice DARLING : Now, what is the question you want to ask ?

The FOREMAN of the JURY : The learned Counsel by reading those clauses has answered my question.

Mr. Justice DARLING : That is what generally happens.

Mr. ELDON BANKES : The other passage I want to refer to is this, and I want to give you exactly what Mr. Murray said, as far as I know it. This is Question 235 on page 36. I say to him : "I will come to that in a moment. He has told us that he agrees with us as to what we mean by 'cost.' Now it is a fact, is it not, that in this account of yours you have debited this first edition with the whole cost of the illustrations—what I call the plant ?—Yes, the making of the plates. Q. Of course with regard to the amount paid to the amanuenses the work, equally with the plates, is available for the next edition ?—Unless they wish to make alterations. Q. The bulk of the work has been done once for all ?—Yes, I should say it has." The other point is on page

37, when I ask him whether he has not in fact made some sales.

Mr. MONTAGUE LUSH : There is Question 239.

Mr. ELDON BANKES : Certainly, I will read anything you wish : "Do you agree with this"—

Mr. Justice DARLING : You stopped at Question 237. You had better read 238.

Mr. ELDON BANKES : Certainly : "May I put it to you that of that figure of £7,060, the total of the items for what we call 'plant,' that means to say items in the same category as the plates and amanuenses, come to £2,269 ?—You are beyond my depth altogether now, because I do not agree with the figure, but I accept the figure as far as the hypothetics are concerned. Q. Do you agree with this, that if a publisher was anxious to really find out the cost to him of the first edition he only ought to debit that edition with a proportion of the cost of what I have called the plant ?—I do not agree with you at all. When the initial outlay of the book is wiped out then the profits are more, but there are many cases when you do not wipe out the initial outlay at all."

Mr. Justice DARLING : That was why I pointed out to you, Mr. Banks, that there is all the difference in the world in Mr. Murray's way of estimating and yours. You want to arrive at what is the value of these plates and plant. He treats it that he produces them all for a first edition.

Mr. ELDON BANKES : Yes.

Mr. Justice DARLING : You want to say you must spread it over many editions, but I have not yet heard any suggestion of how many you can assure him he will have to spread it over.

Mr. ELDON BANKES : No; I quite agree.

Mr. Justice DARLING : Then, he says : "Well, even if that were a fair way or a possible way of estimating it, you, by your action, have made it impossible for me to spread it over other editions." For all I can see there will be none to spread it over.

Mr. ELDON BANKES : I quite accept that as Mr.

Murray's suggestion. I am not in the least bit desiring to conceal what Mr. Murray said. I am only testing the accuracy of that view, and I will tell you why in a moment. My friend has referred to other editions. I refer really to these two sales, not the original plates, but two sales of prints from the plates, because I stand on firm ground there. I have one actual sale recorded in his books, a large amount, and I will deal with that in a moment; but just to finish what Mr. Murray said I will read one passage on page 37, and then I have read all he said. I said to him : "As a matter of fact you have, have you not, sold some plates and prints for foreign editions ?—Yes, which will all be brought into account. Q. I know it will be brought into account. As a matter of fact in this account, although in another part of it, as between you and the editors you have an account in which you show that you have already sold £526 worth of plates and prints ?—Have I ? I was not aware of it. Q. Look at the second paragraph ?—Yes, you are quite right." Now, Gentlemen, that is Mr. Murray's evidence.

Mr. MONTAGUE LUSH : I am sorry to interpose.

Mr. ELDON BANKES : I am going to read the entry.

Mr. MONTAGUE LUSH : As long as you understand that the £526 for sales of the plates refer to the foreign edition and have nothing on earth to do with this, that counterbalances all the items on the other side of the account.

Mr. ELDON BANKES : I think my friend has not read this sufficiently carefully, if I may say so with deference to him. I will read it to you in a moment, and I think I can explain that my friend is in error. Now, what I ask you to say about this plant is this : just accept for a moment the total as £2,700, because that does not come into distinct items. He takes the cost of the plates and the cost of amanuenses as appearing in Mr. Murray's own account by itself in a separate item. Now, how much of that ought fairly to be debited against the first edition ? The amount that ought to be debited

against the first edition is the whole amount, less what you think is the value remaining in it. Now what is the value remaining in it? I suggest to you that £1,000 would be a very low estimate of the value remaining in those plates and plant. Let me test that in this way. There has been already one sale, and you see these plates and plant are valuable, not only for the purpose of bringing out another edition in England, but they are valuable for the purpose of supplying such persons abroad as desire to enter into an arrangement to bring out editions abroad, whether it is the contemplated American edition, or whether it is the contemplated French edition, or whatever the edition may be. Now, Gentlemen, this appears in Mr. Murray's own account, and I will read the two sides of it. I am asking you to assume that £1,000 would be a fair value to put upon that plant at the time this account was made up. Now, would it? It appears that Mr. Murray has entered in his authors' ledger sales of plates and prints, £526 3s. 2d.

Mr. MONTAGUE LUSH: Published by Longmans in America. That is what it refers to; it is the very top of the statement which my learned friend is reading from.

Mr. ELDON BANKES: I think you are wrong. That does not apply to the whole thing.

Mr. MONTAGUE LUSH: I assure you it does.

Mr. ELDON BANKES: I think my friend again is wrong, but it does not matter for my purpose. Perhaps Mr. Lush will look at it and see. I am satisfied my friend's suggestion is wrong, but it does not matter for my purpose, because my case is that it does not matter whether you sell them in Europe, Asia, Africa, or America. The point is, are they of value? Now the fact here is this, sales of plates and prints, £526 3s. 2d., and, I believe, if my friend will inquire, that was a sale of French prints, prints for the purpose of issuing the edition in France. I may be right or wrong about that: I do not care which it is. That is the entry, and on the other side, for the purpose of making up this amount as between himself and the authors, in order to see how

much profit there was upon that, and how it ought to be divided, of course they make a separate account with the cost of those plates, and they do it in this way, cost of plates and prints, £244 5s. Now those are not new plates.

Mr. MONTAGUE LUSH : My friend says that, but where is the evidence of that ? If I might say so, it is pure hypothetics.

Mr. Justice DARLING : He will point it out.

Mr. ELDON BANKES : I have always understood that those are part of the original. Is that wrong ?

Mr. MONTAGUE LUSH : It is quite wrong.

Mr. ELDON BANKES : Then, Gentlemen, my figure requires adjustment if I am wrong. I did not understand Mr. Murray to say so. I asked Mr. Murray whether he had not sold them for £526, and he said point-blank that he had, and therefore I was entitled to assume until the correction was made that he had sold these plates. Now the correction comes, and I am prepared to accept it, and therefore the figure requires adjustment, and it requires adjustment in this way. It appears that the cost of those was £244, and therefore the profit upon them was the difference between £244 and £526, that we may take roughly as £280. Therefore I desire to correct my statement to you that he has made a profit sale of £526. I so understood it from his own answer. It is a profit sale up to the present of £280. If he has made a profit sale of £280, that is divided in the same proportion as the others. I am only now dealing with the value. Am I taking an unfair estimate when I ask you to assume £1,000 for that figure ? I am prepared to say that purchasers can be found who will give a great deal more than £1,000. They will give more like £3,000 for these if they will sell them, but they will not sell them, and the reason why they will not sell them is because they know they are of value ; but I do ask you respectfully to say that when I am making this adjustment you ought to exclude from the cost of this edition such portion of the £7,060 as you consider represents the value of this plant

in their hands. I ask you to take £1,000. I submit it is a very low estimate indeed, and if you only take the £1,000 you will see if you add that to the £2,000 I do get the £3,000, which, if it is introduced into this account, brings the difference between the whole cost of production and the selling price to 3*s.* a copy.

Now, Gentlemen, I have almost finished. I have very little more to say, but I do want you to bear this in mind when you are considering this letter. The cost of production of a book is one thing, the cost of distribution of a book is another thing. When you are talking about profits, of course you have to take into account the whole cost. When you are talking of net profits you have, of course, to take into account establishment expenses ; but when you are talking of gross profits you do not take into account establishment charges. When you are talking of cost of production you do not take into account the cost of distribution. Now I am not going to give it to you in detail, because I think I can call a witness who can give it to you from Mr. Murray's books ; but the fact is that from Mr. Murray's books the cost of production, which is the cost of the paper and the printing and the binding and the illustrations, works out at 8*s.* 4*d.* a copy. If you take the cost of distribution as well, it works out under 13*s.* a copy, therefore I submit to you that the foundation of this article or letter of "Artifex" is absolutely right, and I only ask you before I pass from the figures just to bear in mind this very significant fact, and that is that according to the figures as you have got them—and Mr. Murray admits them—you know the total cost of production, according to him, was £7,060, and the profit realised up to the present is £11,313. Now those figures, you know, are the authors' profits of £5,392 and £2,149 ; total, £7,542. Mr. Murray's profit, £3,771 ; total, £13,313. So that there is up to this moment a realised profit, a divided profit, of £11,313 on a total expenditure of £7,060.

Now, Gentlemen, you know that, taking the thing

as a whole, I have been dealing with items; but is it an unfair criticism of the cost of a thing to be published when you find that the authors and the publishers take £11,000 odd profit upon a total expenditure of £7,060 to date?

Mr. Justice DARLING: When you say profit now, are you talking of gross profit or net profit?

Mr. ELDON BANKES: The actual amount into their pockets.

Mr. Justice DARLING: Net profit?

Mr. ELDON BANKES: Yes, that is so. Now I must divide it. As far as the authors are concerned, for this purpose I ought to treat it as gross profit.

Mr. Justice DARLING: That is what I thought. I never myself have been able to understand why gross profit is called profit at all, because the gross profit includes something which is not profit.

Mr. ELDON BANKES: Then, of course, your Lordship sees these figures require this adjustment, that these figures showing this result take no account of the discount.

Mr. Justice DARLING: Nor of distribution charges?

Mr. ELDON BANKES: Oh yes; there is all that in it. The whole amount is in the £7,060.

Mr. Justice DARLING: Do you say you make 32s. a copy profit?

Mr. ELDON BANKES: Including every item of expenditure.

Mr. Justice DARLING: Including the distribution charges and everything?

Mr. ELDON BANKES: Yes.

Mr. MONTAGUE LUSH: And including establishment charges?

Mr. ELDON BANKES: No.

Mr. Justice DARLING: He cannot put anything into his pocket until he has paid his establishment charges.

Mr. ELDON BANKES: I am not disputing that. I desire to correct the statement I made just now. The

£11,000 odd is the difference between the actual cost of every item except establishment charges and the amount received, without taking into account the discounts and allowances.

Mr. Justice DARLING : Why I asked you is this : this is an action for libel, and whatever these figures may turn out to be the defence is fair comment. Now the whole thing is summed up in these words in the letter of "Artifex" : "He has exploited"—that is Mr. Murray has exploited—"the great personality of Queen Victoria for his own ends, and coined the national interest in her doings for his own enrichment, into 32 pieces of silver, to be precise." Now he has not enriched himself with 32s. if he has still to pay out of those 32s. something in the way of establishment charges or anything else.

Mr. MONTAGUE LUSH : The two-thirds to the authors as well.

Mr. Justice DARLING : That is a statement of fact. I will not say a statement of comment can never be made on a statement of fact, and before you can treat it as enrichment you must arrive at net profit, and not at gross profit.

Mr. ELDON BANKES : Gentlemen, of course my whole case to you is that reading this letter as a whole it is substantially correct so far as it states facts. My argument is based upon the statement that everybody accepts the view in dealing with these things that when you talk of cost of production and profit you are talking of the actual cost and the gross profit, and when you speak of putting 32s. into your pocket you are treating it as putting there 32s., subject, of course, to your having to pay your rent and establishment charges, and whatever it is. Gentlemen, that is what is meant by saying a man has made so much gross profit. Now the point is before you ; it is no use my insisting on it or elaborating it. My case is that reading this letter fairly it is substantially accurate. If you take a different view, as I said before, "The Times" are in the wrong. They are in the right if you think this statement is substanti-

ally right ; they are wrong if you think it is inaccurate. I do not blink it for a moment, I do not desire to keep anything back from you. I only desire to have the opportunity of presenting my case, and if you accept it I shall be pleased ; if you do not accept it, well, I must accept your verdict.

Now, Gentlemen, I think I must finish, I only want to say this, I am going to call the gentlemen whose names I have mentioned, not because they throw any light upon whether this statement is really accurate or whether it is not accurate, but because I do desire to clear away the suggestion that there has been in the office of "The Times" a conspiracy between the different members of the staff to write this review in order that the letter might be founded on it. I desire to clear that away, although I do not think it has any very material bearing upon this case, but I feel it is a thing to be considered as the charge stands. I want to let you know the facts. I will call these gentlemen one after the other, and so far as my examination of them is concerned, it will not take long ; but the bulk of my case and the substance of my case is that upon Mr. Murray's own figures I have established that the foundation of this letter is correct, and that if the foundation is correct and the difference between the cost and the gross profits was 32s. per copy he was justified, whether you agree with him or not, if he took that view, to say that the charge was an exorbitant charge.

Mr. BRUCE RICHMOND, sworn

Examined by Mr. ELDON BANKES

1107. I think you live at 9, Victoria Square, and you are the editor of the Literary Supplement of "The Times" ?—Yes.

1108. How long have you occupied that position ?—About five years.

1109. Have you any concern with any other part of the paper?—Yes, I am assistant editor.

1110. Is it part of your duty as editor of the Literary Supplement to send out books for review?—Yes.

1111. And to edit the reviews when they come in?—Yes.

1112. Do you remember Mr. Murray sending in the book "The Letters of Queen Victoria" for review?—Yes.

1113. Can you tell me the date at which that was received at "The Times" office?—I think it was the Friday before the book was published.

1114. That would be the 11th, would it—the Friday before the review?—The Friday before the review of the book was published.

1115. I daresay Mr. Murray's book will fix the date. It was published on Wednesday, the 16th, and it came in on the Friday before the review was published?—Yes.

1116. Did you select the gentleman to whom you desired to entrust the review?—Yes.

1117. Is he a gentleman, or was he at that time in the employ of "The Times" on the staff?—He is not on the staff. He is a reviewer. He writes frequently.

1118. Do you remember the date when you sent the book to Mr. Bailey for review?—I sent it on the night on which it came—the Friday.

1119. Mr. Justice DARLING: You sent it to him. You did not see Mr. Bailey?—No.

1120. Mr. ELDON BANKES: You saw him afterwards. You sent it, in the first instance?—Yes.

1121. Before you sent the book to Mr. Bailey had you had an interview with Mr. Moberly Bell?—Yes.

1122. Is he the manager of "The Times"?—Yes.

1123. I am going to call Mr. Bell, and my friend does not object to the conversation. Will you tell us, please, what the substance of the conversation was between you and Mr. Bell?—He asked me whether we were going to say anything about the price of the book. He said:

"Have you seen this book? I think you ought to say something about the price of it in the review?" I said I thought not, because I was particularly anxious to keep the Literary Supplement independent of the book war. He said he thought it would be a fair thing to do. So I said, in that case I should prefer to leave it to the reviewer, and I would write to the reviewer, and tell him if he thought it was a fair thing to do, and a thing he would naturally do, to refer to the price of the book, there should be a reference to the price, but not if he would not naturally on his own account.

Mr. Justice DARLING: Does the letter exist?

1124. Mr. ELDON BANKES: I am afraid not. Have you a copy of your letter?—No.

Mr. MONTAGUE LUSH: Mr. Bailey might have it.

1125. Mr. ELDON BANKES: I am going to call Mr. Bailey?—But the question of whether there was any mention of the price and any reference to the price at all in the review was to be decided by him.

1126. Did you say anything more to Mr. Moberly Bell on the subject then?—I told him I should leave it to the reviewer. I did not tell him whether there would or would not be any reference. I said I was leaving it to the reviewer. And I asked Mr. Bell to let me have some idea of what it was he thought ought to be said and let me have a memorandum in case the reviewer agreed that anything should be said.

1127. Is that the document that Mr. Bell let you have in reference to that suggestion? (Handing document.)—Yes.

1128. Do you remember when Mr. Bell let you have that?—No, I do not remember. On the night on which the book came in we discussed it, and I asked him to let me have a memorandum, and in the course of a day or two this arrived.

1129. This was as it was written in this way: "But another grave mistake has been committed in the method of the publication. The book is one that would create very wide interest in one form or another. It

would appeal to every reader in the Empire, and it is difficult to overestimate its educational value if it were accessible to the classes who are apt to believe that wisdom lies only in a democracy; but the three volumes, which might easily have been produced at 10s., and which at a reasonable figure would have sold by hundreds of thousands, has been offered to a privileged few at 63s. Even Mr. Morley's masterly record of the long life of Mr. Gladstone was obtainable at 42s. For these records of 32 years of letters, not very adequately edited, the public is asked to pay 50 per cent. more. By whom ever committed, the blunder is to be deplored." That is the thing as it was originally written.

Mr. Justice DARLING : Some of it is struck out.

Mr. ELDON BANKES : Some of it was deleted by the editor.

Mr. Justice DARLING : "Even Mr. Morley's record of the long life of Mr. Gladstone" is deleted. It is gratifying to see that even Mr. Moberly Bell is edited.

1130. Mr. ELDON BANKES : After this interview with Mr. Bell, and after you had sent the book and written the letter to Mr. Bailey, did you see him ?—Yes.

1131. Was that before the review came in ?—Yes, on the Monday before the review came in. I lunched with him to discuss the review.

1132. Would you tell us what passed between you and Mr. Bailey on this matter ?—We discussed the review in general, in what kind of way we would treat the book, and what he was going to say, and I asked him what he thought as to whether it was fair to make any allusion to the price or not, and he said he thought it was. The upshot of the conversation was that we left it that he should write his review and send it in, and if it came conveniently somewhere in the review he would write a sentence saying the price of the book was too high, or else he would leave it to me ; but between us either he or I would introduce a sentence alluding to the price of the book.

1133. That would be Monday, the 14th?—Yes.

1134. Mr. Justice DARLING: Up to the time you saw Mr. Bailey had you seen Mr. Bell's memorandum?—Yes, I think I had.

1135. Did you show it to him?—No. I did not intend to use it or anything. It was merely for my information as to the sort of thing that Mr. Bell thought should be said; but there was no question of using it.

1136. Mr. ELDON BANKES: That was on the Monday. Do you remember the day on which Mr. Bailey sent in his review?—Yes, it came in the night before the Supplement was printed. That would be the Tuesday night.

1137. Is this the review as it was sent in?—Yes.

1138. Do you see page 16?—Yes.

1139. Is that page 16 in the same condition as it was when sent to you by Mr. Bailey?—Yes.

1140. What does Mr. Bailey say on page 16 about the price?—There is the sentence after the words “these volumes,” “Alas that we should have to add if he can afford to buy them.”

1141. It runs thus: “No one who wants to know what was really happening in England and Europe between 1837 and 1861 can do without these volumes. Alas that we should have to add if he can afford to buy them.” You see that there is a space left after those words?—Yes.

1142. How came that to be done? Was that in consequence of any arrangement?—When this review came there was a letter from Mr. Bailey with it saying that he had not written a full sentence about it, but left it to me, and suggested that this was the place where it should go in. I imagine the blank was left to call my attention to it.

1143. Have you got that letter?—No.

1144. Do you keep such a letter as that in the ordinary course?—A covering letter comes with every review. None of them are kept.

1145. Did you then proceed to edit the review?—I

sent the review as it came straight to the printer to be printed.

1146. That would be the first step?—Yes. Then I prepared a sentence of my own, as Mr. Bailey had suggested, to add to this sentence of his, where he says: "Alas we should have to add if he can afford to buy them." Some such sentence as this: "It is a pity, owing to the price of the book, there would be so great a difference between the number of people who would wish to buy and could buy." I do not remember the sentence verbatim, but it was a sentence something like that.

1147. How came the review to take its ultimate form?—After it had been set up in type on the Wednesday, I was preparing to put in my sentence after this parenthesis of Mr. Bailey's, and then on looking at the review as a whole, I thought it was a bad place to be in. It was in the middle of the review, when everybody would be interested in the part about the Queen. I thought it absurd to have a sentence in the middle there, and anything said about that ought to be said in the early part of the review, where you are discussing the preliminaries how the editors have done their work and all that sort of thing. I thought all that prefatory matter had better be given at the beginning, and got over as soon as possible, so I struck out in the proof Mr. Bailey's little sentence and intended to add Mr. Bailey's sentence and mine in the place where I thought it ought to come, namely, the beginning of the review. It was rather a pointless sentence. It did not fit in very well at all. I did not find any good place where it could be put in. I mean there was no one sentence that would lift out very well for me to substitute my sentence without it being a very bad join, and so, having to do it in a hurry, and arranging the thing I saw a place where I thought three sentences would come out without making a gap, and I had to put in an equivalent amount because it was so late. The amount put in had to be as big as the amount that

came out. So in order to do that I took three sentences out of Mr. Bell's memorandum and took out enough of the introductory paragraph to make room for what I put in.

1148. Mr. Justice DARLING : This alteration in Mr. Bell's memorandum you made ?—Yes, the alteration at the beginning is really a matter of joining it in.

1149. It was written, "But another grave mistake" and you turned it into "But a grave mistake" ?—Yes, and the statement "Which might easily be produced at 10s." I altered to "Which one imagines might be produced for 10s." or something like that.

1150. Mr. Bell wrote : "But the three volumes, which might easily have been produced at 10s.," and you made them stand, "But the three volumes, which might, one would imagine, have been produced at 10s." ?—Yes, I did not want to commit ourselves to any statement about that, because it was not literary matter at all.

1151. Mr. ELDON BANKES : Having done that, did the review go to press ?—Yes.

1152. Did you have any communication with Mr. Bell about the matter at all except what you have told us on the first occasion ?—No.

1153. After you had made this alteration did you communicate with Mr. Bailey at all upon the subject as to the alteration you had made ?—No, I do not think so. I communicated with him after receiving the review, when he told me what he had done. I wrote him a line saying, "All right, I see what you have done. I will put in the sentence," but that was on the Tuesday, the night I received the review.

1154. Is that all you had to do with the matter ?—Yes.

1155. Was the alteration made entirely on your responsibility ?—Yes.

1156. Had you any communication with any person on the staff of "The Times" or connected with the Book Club with reference to what should appear in the review

at all except what you have told us took place between you and Mr. Bell?—No, except on the staff of "The Times." There is my colleague of the Literary Supplement. We read the proofs together, and that sort of thing.

1157. Was there any communication as to what you should put in?—Oh no.

Cross-examined by Mr. MONTAGUE LUSH

1158. Have you ever before this been instructed by Mr. Moberly Bell to tell a reviewer to talk about the price of a book?—No.

1159. Is this the first and last occasion on which that has happened to you?—Yes.

1160. When did Mr. Moberly Bell first talk to you about his wish to have the price mentioned?—It was the day on which the book came in. I think the book came in on the Friday.

1161. I am told it was the 9th, but it does not much matter?—They let us have an advance copy, but how many days before it was I do not know.

1162. Did Mr. Moberly Bell tell you why he wanted the price mentioned?—No, I do not think so.

1163. Did you ask him?—I guessed. There was the book war going on, and the question of the price of books was a question of importance.

1164. You guessed that?—Yes, I guessed that.

1165. A good opportunity to aim a blow at the publisher?—I thought that might have been in his mind. I do not know.

1166. I should like to have seen your letter to Mr. Bailey, but I daresay my friend will ask if Mr. Bailey has it.

Mr. ELDON BANKES: Mr. Bailey will tell you if he has it. I do not know.

Mr. MONTAGUE LUSH: Mr. Bailey is in court. Has he got it?

Mr. BAILEY : No ; I have not got it.

1167. Mr. MONTAGUE LUSH : Did you leave it to Mr. Bailey's discretion to say what he thought about the price when you wrote to him in the first instance ? Of course, it was subject to being edited ?—I left it to him to decide whether there should be a reference.

1168. Supposing Mr. Bailey had said that he thought the price was too low and that the book was published too cheap, would that have been suitable to you ?—I do not know. I should have discussed the question with him. I wrote to ask him whether he thought of putting in anything about the excessive price. What would have happened if he had said anything else, I do not know.

1169. Then you did intimate to Mr. Bailey that what was wanted was a statement that something was too high ?—No, I did not intimate to him about anything being wanted. I asked him whether he would mention anything about the price of the book.

1170. You said just now, "excessive price." What you suggested to him was a statement that the price was excessive ?—Yes ; I represented that to him, and he was to decide whether that statement should be made or not.

1171. Mr. Bailey's expectation of your wish came back in the form of the manuscript which only said, "Alas that we should have to add if he can afford to buy them" ?—No, I had seen him. I had had a long talk with him.

Mr. Justice DARLING : They talked at luncheon about what sort of review should be written. Mr. Bailey had then read the book, and they discussed the book war, and what kind of review it should be, and then something was said about the price.

1172. Mr. MONTAGUE LUSH : I should be inquisitive to know what that was. Did you tell Mr. Bailey that you thought Mr. Bell wished the book war to be utilised ?—What I told him was that it had been suggested to

me that we should say the price was too high. I was anxious that nothing should be said.

1173. You were anxious that nothing should be said ?—Yes.

1174. Why were you anxious that nothing should be said ?—Because I was anxious that nothing that was in any way connected with the book war should be put in the Literary Supplement. I had been always trying to keep the Literary Supplement absolutely independent of the book war, and if I thought it was a fact that the statement of the price was thoroughly due to the book war I was determined not to have any mention of the price put in; but if Mr. Bailey, who was not interested in the book war, thought it right that there should be a mention of the price, then I would not mind one being made.

1175. Then you got from Mr. Bailey a manuscript with only this statement in it: "Alas that we should have to add if he can afford to buy them." There is nothing there conveying any imputation on the publisher ?—No, nothing whatever.

Mr. ELDON BANKES: Nor is there in the review.

1176. Mr. MONTAGUE LUSH: We will see about that. When you got that statement in the manuscript from Mr. Bailey did you see Mr. Moberly Bell with reference to the question of whether that should be accepted or not ?—No.

1177. Not at all ?—No.

1178. Then I do not follow you. If you did not wish the book war matter to be introduced into the Literary Supplement, why did you alter what Mr. Bailey had written, and instead of it insert part of what Mr. Moberly Bell had written ?—I thought I had explained that. It was because, in the first place, Mr. Bailey did not intend this to be the only reference. He put this in as a suggested sentence, and it had been agreed that he or I should write a small sentence about the price of the book being too high; and then, as I said, I did write such a sentence, but owing to the difficulty of putting

it in the right place, and it being the last moment, I ultimately accepted part of the memorandum which Mr. Moberly Bell had written.

1179. When Mr. Moberly Bell spoke to you about it and gave you the memorandum, did you tell him that you would see that something to that effect was put in or not?—No, I did not.

1180. Are you sure of that?—Perfectly certain.

1181. Then if you were against it being put in why did you have it put in against your judgment?—Because I thought I might be perhaps a little too hard. Mr. Moberly Bell thought it fair that it should go in; I thought it was not, and as neither of us was in a position to form an absolutely unbiased judgment I asked Mr. Bailey.

1182. Mr. Justice DARLING: Do you mean that it was put in against your own judgment?—No, my Lord, not ultimately.

1183. Mr. MONTAGUE LUSH: Then I do not follow you?—The point is this. We both of us took different views as to what should be done with the review, and I thought it best that the reviewer should settle it for himself. All I wanted to have was an absolutely unbiased review, and I thought that if there was any mention of the price it should be on the initiative of the reviewer himself.

1184. When you got from him his judgment in the matter, which only was the sentence: “Alas that we should have to add if he can afford to buy them,” why did you not leave it there?—That was not the only thing. He sent it with that sentence, and with an intimation to me that that was the way he expected me to make my addition.

1185. You either did, or did not, in your judgment think that this matter of the book war should be put into the review. Which did you think?—I did not regard it as a matter of the book war. I regarded it as a matter of public interest. If it had been put in solely at Mr. Moberly Bell’s suggestion, it would have been a

matter of the book war, but if an ordinary man like Mr. Bailey thinks it worth mentioning—and he and I agreed that the sentence should be put in—I thought it only natural that it should go in.

1186. Mr. Bailey did not agree that any part of Mr. Moberly Bell's memorandum should be put in?—No; we agreed that he or I should write a sentence in.

1187. Was it fair to put in a passage to the effect of Mr. Moberly Bell's memorandum?—The effect that the price was too high—yes.

1188. That was fair, you think?—Yes.

1189. You thought that?—Yes.

1190. Did you wish it put in?—I wished the statement put in that the price of the book was too high. I wished that, after hearing from Mr. Bailey; I did not wish it before; but when Mr. Bailey thought it was right to be done, then I thought it right that it should be so.

1191. Do you tell the Jury that your judgment was influenced by what Mr. Bailey said?—Yes, I wrote to him at once and I said: "This is a matter to be settled by you—the question as to whether there should be a reference to the price."

Mr. Justice DARLING: What Mr. Bailey said amounted to a lament of his fellow readers: "Alas that we should have to add if he can afford to buy them." One might say the same thing of plovers' eggs.

1192. Mr. MONTAGUE LUSH: I want to get at the bottom of it. When you saw Mr. Moberly Bell and got his memorandum, I understand from you that in your judgment it would be unfair—I think that was your expression—to put in a statement which would be possibly beneficial to the book war as to the price being excessive?—I do not know about unfair. I regarded it solely from the point of view of the statement. Mr. Moberly Bell said that something should be mentioned, but I was anxious that nothing should be said.

1193. Was that your state of mind when your interview with Mr. Moberly Bell came to an end?—Yes.

1194. You asked Mr. Bailey then to exercise his judgment as to making a reference to the price?—Yes.

1195. Mr. Bailey did exercise his judgment by putting in the short passage that my Lord has referred to?—You have missed out the important step. I saw him and had a long talk with him between the two, and then it was agreed that either he or I should put in a sentence about it.

1196. What do you mean by a sentence about it?—A sentence saying that the price of the book was too high.

1197. Mr. Justice DARLING: That was before he wrote, "Alas that we should have to add if he can afford to buy them"?—Yes, he did not ultimately do it. He agreed that either he or I should.

1198. After the discussion with him, and the agreement that something should be put in about the price of the book, that is what he put?—Coupled with a statement to me that he did not put anything about the price, and he left it to me.

1199. Mr. MONTAGUE LUSH: I want you to tell the Jury why, if Mr. Bailey left it to you, and your judgment was what you have told us, did you add the passage which now appears in the review?—Because the composite sentence of Mr. Bailey and myself did not go in well in the place where it originally stood. It was a question of fitting in. I had not intended until the last moment to use any of Mr. Moberly Bell's matter, but at the last moment, when I was transposing the position of the sentence, I took the longer one instead of the shorter one, because it fitted in the proof. It was a pure accident up to the last moment that Mr. Moberly Bell's memorandum was used at all.

1200. Will you look at the review and tell me this? As Mr. Moberly Bell wrote his memorandum the last four lines run in this way: "But the three volumes, which might easily have been produced at 10s., are offered"—so and so?—Yes.

1201. Will you tell me why you altered that statement of fact into the statement which now appears in the review: "But the three volumes, which might, one would imagine, have been produced at 10s."—so and so?—Only because I did not want to make any definite statement. I thought this was far more indefinite on a subject with which I was not concerned in the least.

1202. In other words, you thought it would be safer to put in a hypothetical statement rather than Mr. Moberly Bell's statement of fact?—It has since become an accurate statement of fact. I did not put any very great pressure upon the 10s., which has since become an important figure. I really meant it to be simply a statement that the book might have been produced at very much less.

1203. Did you tell Mr. Moberly Bell, before you cut his memorandum about, that you were going to do it?—No; he did not know that I was going to use it.

1204. He wished you to use it?—That does not matter. He may have wished me to use it, but it was for me to say whether I should use it or not.

1205. Do you tell the Jury that you do not know that he wished you to use it?—He wished me to use it, but he offered it to me, and I was perfectly free to refuse it, and, as a matter of fact, I did.

1206. When he told you that he wished you to use it, did you think it might have a deleterious effect upon the sale of the book?—I do not know.

1207. Just think about it, please. The reviewer was far from complaining that the book was not worth the money. His only comment was that people were not rich enough to buy it?—That is only according to the sketch sentence he wrote in.

1208. Will you tell me whether you did not realise that it might be injurious to the sale of the book?—It was a statement that the price was too high.

1209. Will you please answer the question?—It is a statement that the price was too high.

1210. Did you think that it would be injurious to the

sale of the book ?—I do not suppose I thought about it much.

1211. Much ?—Or at all.

1212. Did you think at all about it ?—I certainly thought that the statement that the price of the book was too high should go in. What the effect of it was I do not know.

1213. Mr. Justice DARLING : Why should it, if it was not to produce any result ? Why put into the article something which was to produce no result ?—It is not an isolated instance. Whenever a book comes out that is obviously too expensive, one would say so naturally in the review.

1214. Mr. MONTAGUE LUSH : You told me a little while ago that it never happened before ?—No. I said I had never asked before.

1215. Have you ever asked a reviewer before to say that the price of the book was too high ?—No.

1216. This is an isolated instance. Will you tell me why you wished or thought it right to put in a statement which I think you agree with me must be injurious to the sale of the book ?—I thought it was a fair statement to say that the price was too high if the price was too high.

1217. Was that your reason ?—I do not quite understand you—my reason for what ?

1218. Your reason for wishing to put in a statement which you agree with me would injure the sale of the book ?—My reason for putting it in was that the reviewer was to say whether he thought it was all right.

1219. No. The reviewer had said something quite different. “ Alas that we should have to add if he can afford to buy them ” ?—But he did not leave it at that. He wrote that down expecting me to add the sentence which he had originally thought he might add but had not added, namely, that the price of three guineas was too high a price for the book.

1220. In other words, the reviewer put something which would not injure the book, and left it to you to

put in something that would. . Is that what happened ?—He left it to me.

1221. Please answer the question. Is that the substance of what occurred ?—I do not think it is quite a fair way to put it.

Mr. Justice DARLING : You do not mean that Mr. Bailey stopped there and left it entirely to Mr. Richmond that he might put in anything damaging if he liked ?

Mr. MONTAGUE LUSH : I do not know what Mr. Bailey meant.

Mr. Justice DARLING : Let us make everybody responsible for what he did, not for what he did not do. All that Mr. Bailey did was to write : " Alas that we should have to add if he can afford to buy them."

Mr. MONTAGUE LUSH : That was a perfectly proper review.

Mr. Justice DARLING : A phrase which is a lament over the uneven distribution of wealth.

1222. Mr. MONTAGUE LUSH : I do not want to pursue it, because we have the facts, but I do ask you now to tell me whether the substance was this. Mr. Bailey sends in the review, which is perfectly innocent so far as any injury to the book is concerned, and you alter it into a statement which you know, when you think of it, would injure the sale of the book. Is not that true ?—I certainly did put in this alteration, and the effect of it is, perhaps, to injure the sale.

1223. Do you doubt that the effect of that alteration would be necessarily to injure the sale of the book ?—No. I daresay it was ; but I did not put it in with that intention.

1224. Do you think that Mr. Moberly Bell had the intention if you had not ?—I daresay he may have had.

Re-examined by Mr. ELDON BANKES

1225. Of course Mr. Moberly Bell will answer for his own intentions when he comes ?—Yes.

1226. Did you discuss the price of this book with Mr. Bailey?—Yes.

1227. Before the review came in did he express any opinion as to the price?—No. He simply said he thought it was fair that he himself would say that the price was excessive.

1228. Did he form any opinion as to whether the price was too high or not, and express it to you?—He said that he thought it was.

1229. Was that at your interview with him prior to his sending the review to you?—Yes.

1230. You would not have inserted anything in the review yourself except for the fact that Mr. Bailey had expressed that view?—No.

1231. You have spoken about the Literary Supplement, and you have told us that you for five years have been editor of it. Have you throughout that time endeavoured to keep the Supplement apart from any question of the book war?—Yes.

1232. Was that the reason why your view and Mr. Moberly Bell's view differed on the occasion of the first interview?—Yes.

1233. Was that the reason why you insisted that it should be left to the discretion of the reviewer?—Yes.

1234. Would you have inserted anything about the price except for the fact that Mr. Bailey had told you he thought the price was excessive, and left it to you to make a reference to that if he did not?—That was the only reason.

1235. He did in fact leave a space in his original manuscript below the sentence that he had in fact inserted?—Yes.

1236. Did you understand that was for you to put in what you thought proper, having regard to the arrangement made with him?—Yes.

1237. You have always endeavoured to treat all books sent in to you for review fairly?—Yes.

1238. Whether they came from Mr. Murray or any other publisher?—Yes.

Mr. JOHN BAILEY, sworn

Examined by Mr. EUSTACE HILLS

1239. I think in October of last year you were asked to review this book, "The Letters of Queen Victoria"?—Yes.

1240. By Mr. Bruce Richmond?—Yes.

1241. We have heard from Mr. Murray that it could not have been placed in better hands. First of all, with the book, when it was sent you, you got a letter from Mr. Bruce Richmond, did you?—Yes, I expect so. I am sure to have had a letter. I was in the country, to the best of my recollection, when the thing was first mentioned, and I think Mr. Richmond wrote me to ask me if I would write on this book, and I replied to him that I was returning to London on the Friday, and when I arrived at my house I found the book.

1242. After you got the book did Mr. Bruce Richmond come and see you?—Yes.

1243. I think you had lunch together?—Yes; on the same day, I believe. Certainly we met; I know that. I cannot say whether it was at lunch or not now.

1244. I think you have been in court and heard the account Mr. Bruce Richmond has given of what passed?—Yes.

1245. Do you agree with that?—Yes, substantially.

1246. At that meeting did you express an opinion about the price of the book?—Yes, I did.

1247. I will not take you through the whole of the meeting. But just tell us what you said with regard to the price?—Mr. Richmond asked me whether, in my opinion, it was a right thing that something should be said about the price of the book, and I said I thought the book was undesirably dear, and I thought it quite a right thing that as a matter of public interest some comment should be made on the price of the book.

1248. Mr. Justice DARLING: You said you thought it

undesirably dear?—Yes; I could not swear to my words, of course.

1249. And that something should be said about it as a matter of public interest?—Yes.

1250. Mr. EUSTACE HILLS: Was anything said as to who was to say anything about the price of the book?—Mr. Richmond asked me whether I should be disposed to say anything myself or whether I would leave something to be put in in the office.

1251. What did you say to that?—I said that I had not at that time written more than a few words of the review, and that I could not tell exactly how the review would work out, and that if it fitted in with what I was saying, to say something about the price, I would put something in myself, but that if that did not work out like that I would leave it to him to put in what he thought right in accordance with our conversation. The conversation was wholly on the basis that it was left with me whether anything should be put in or not.

1252. Then you say you had only just written a few lines?—As far as I remember.

1253. When you came to write the review what did you in fact do on this matter?—I wrote the words which have been read.

1254. Did you leave the space about which we have heard?—Yes; and I wrote a letter with the manuscript when I sent it back.

Mr. MONTAGUE LUSH: Is the original manuscript in existence?

Mr. ELDON BANKES: Yes. (Handing same.)

1255. Mr. EUSTACE HILLS: What did you say in the letter which you sent with the manuscript of your review?—To the best of my recollection I said, “You will see that I have written a sentence”—which was the sentence which has been read, and which is in my manuscript—“and I have left a space, where you can add further words, if you like, on the subject.”

1256. Did you see the review, after it was printed, as a whole?—Yes.

1257. Did you consider the statement which had been made as to the price a proper one or not—

Mr. Justice DARLING : How is that material ?

Mr. ELDON BANKES : We do not want that, my Lord.

Mr. Justice DARLING : It is irrelevant.

Mr. EUSTACE HILLS : If your Lordship pleases.

Cross-examined by Mr. MONTAGUE LUSH

1258. As I understand, when you said just now that you expressed a view that it was undesirably dear, what you meant was that you thought it might have been better if a less expensive book had been published ?—Not only that. Of course I am not an expert in book production, but I thought that books were very rarely—speaking vaguely from memory as a book buyer—produced at three guineas except expensive art productions, and so on, and it seemed to me the price was too high.

1259. Had you any ground, by experience or otherwise, for saying what the cost of producing it would probably have been ?—No, I had not.

1260. Not in the least ?—No.

1261. For all you knew, the three guineas would be a proper price, leaving only a fair and usual profit ?—I suppose I went on the general price of books which I was familiar with, and I assume that nobody produces books at a loss.

Mr. Justice DARLING : Except authors.

1262. Mr. MONTAGUE LUSH : I think you would agree with me, in fact you have said that you are not an expert, and you could not say what the cost of producing that volume would be ?—No, certainly not.

1263. Mr. Justice DARLING : You have no idea what the authors' share in this book was ?—No.

1264. Not the least ?—No, none.

1265. Mr. MONTAGUE LUSH : On the face of the review you sent in you had this little passage about "Alas it is not everybody who can afford it." You added that

after you had written more than that of your original manuscript?—I do not understand you.

1266. If you look at your manuscript you obviously added this little passage?—I do not think so, but I will look.

1267. I think you will see that was so?—Oh yes, that is so, evidently, from the way it is written.

1268. And you left a space in which about two more lines might fairly have been added?—In leaving only that small space—

1269. I will not trouble about that. I suppose you had no intention or desire to injure the sale of the book?—Certainly not to injure Mr. Murray or the sale of the book.

1270. Mr. Justice DARLING: Of course, if he had he would not have written as he did. He wrote a laudatory review?—I regard it as the duty of a reviewer to tell the public what he thinks about the book, and I said what I thought about the excellence of the book itself, and I thought it right something should be said about the price, and I thought it was too high and thought it was my duty to say something about that too.

1271. Mr. MONTAGUE LUSH: What you said about it we know: “Alas that we should have to add if he can afford to buy them.” Do I understand you to say that you gave unlimited authority to Mr. Richmond to put anything he liked into that space?—No. I talked to him about the question, and he heard my views, and it was understood that he would put in something in general accordance with what I had said.

1272. In general accordance with what you had said, I agree. Do you observe what you had said was a perfectly innocent statement which could not injure the sale of the book?—I mean what I had said in conversation with him.

1273. You cannot have said to him you thought the profit was too high, because you did not know the cost?—No; but I suppose I was thinking of such a book as Mr. Gladstone’s Life. I do not say that was in my mind.

That was the sort of thing that was likely to be in my mind, and I should have imagined from my general knowledge that such a book could be produced at two guineas, or at a less price at any rate than three guineas, and therefore it was suggested that something should be said about that.

1274. What I mean is this : You did not suggest to him in your conversation that anything should be said which indicated that the publisher was making an extortionate profit, or anything of that sort ?—No ; I did not at all mean that he was.

1275. And therefore you did not intend, as I suggest to you, to authorise Mr. Richmond to utilise that space by saying anything which could indicate that the publisher was making too large a profit ?—I suppose if you say the book is too dear, that is tantamount to saying that somebody, either the author, or the publisher, or somebody, is making an unnecessary profit.

1276. Surely I should have thought not ; but it is for you to judge, not me. I only suggest to you that the book may be an expensive book and yet the publisher and the author may not be making an unfair profit ?—I meant in my imagination, as far as I could form an opinion, the price of three guineas indicated that somebody was making an excessive profit.

1277. You do not form your opinion on imagination, surely ?—No ; I formed my opinion on my general experience as a buyer of books ; and if Mr. Gladstone's Life could be produced at two guineas, I suppose I should have thought this would cost about the same, and, therefore, there must be an extra guinea of profit here.

1278. You had formed no opinion, you told us, not having an experience to guide you, as to what the profit would be upon these three volumes ?—No ; I did not go into the question of cost of production, because I could not go into that.

Mr. Justice DARLING : Mr. Bailey said that, looking at the book, and seeing the sort of price he gives generally when he buys books, he thought that somebody was

making an unusual profit. It does not carry us a bit further.

1279. Mr. MONTAGUE LUSH: Did Mr. Richmond tell you that he had had a memorandum from Mr. Moberly Bell?—No.

1280. He did not mention that?—No; I feel sure he did not.

Mr. Justice DARLING: He said he did not.

1281. Mr. MONTAGUE LUSH: I suppose you did not see Mr. Bell about this matter at all?—No.

Re-examined by Mr. ELDON BANKES

1282. You did not see anybody connected with "The Times" about the matter except Mr. Richmond?—No.

1283. In your conversation with Mr. Richmond did you convey to him the impression that you have been conveying to us now as to your idea about the price?—Yes.

1284. That the price was too high in the sense that somebody was getting too much profit, in your view?—Yes. That is what appeared to me.

1285. That is what you conveyed to Mr. Richmond?—Yes.

1286. It was in that sense that you intended him to put something into the review?—Yes.

Mr. CHARLES FREDERICK MOBERLY BELL, sworn

Examined by Mr. ELDON BANKES

1287. I think you are the manager of "The Times" newspaper?—Assistant manager I was.

1288. Have you occupied that position for some time?—18 years.

1289. In the month of October 1907 did you see an

announcement of this book of Mr. Murray's at the price at which it was intended to be published?—Yes.

1290. Was there a public announcement made that this work was coming out at this price?—Yes.

1291. That is the publishers' ordinary course with reference to the books they publish?—Yes.

1292. They issue advance notices as to the price?—Yes. I knew it. I cannot exactly say how, but that would be the way.

1293. In consequence of that, did you have an interview with Mr. Bruce Richmond?—I see Mr. Bruce Richmond every day, and in the course of one day I said to him: "This book seems to be published at an extraordinarily high price; I think it ought to be noticed."

1294. Mr. Bruce Richmond has told us that that conversation took place on the day the book came in. Can you fix the date?—I could not swear to the date, but it would be about that time. It might even be before the book came in. I do not know.

1295. You have heard what Mr. Richmond has said about your conversation with him?—Yes.

1296. Was that accurate?—Quite accurate, to the best of my recollection.

1297. As a result of that conversation did you write that memorandum which has been put in, and leave it with Mr. Richmond?—Yes.

1298. Did you leave it absolutely to his discretion as to whether he should make use of that or not?—Of course. It would have been impertinence to do otherwise.

1299. Has he absolute control over the Literary Supplement as to what shall be put in and what shall not?—Most absolutely, subject only to the editor, and not to me.

1300. Do you remember how soon after your conversation with Mr. Richmond you wrote that memorandum?—No. It is six months ago, and I cannot say, but it would be directly after. The conversation, as far as

I remember it, was this. He said, "Will you write what you think ought to be said?" I said, "All right"; and I wrote it probably the same day.

1301. After writing that memorandum did you have any further communication with Mr. Bruce Richmond on the subject at all?—None whatever.

1302. Until the review was actually published did you know whether he had utilised any portion of your memorandum or not?—No, I could not know.

1303. Is that all you had to do either with any portion of the review or with the letter of "Artifex"?—Absolutely all.

Mr. Justice DARLING: Or with the letter of "Artifex"?

1304. Mr. ELDON BANKES: I am coming to the letter of "Artifex." Did you have any conversation with any one else, except Mr. Bruce Richmond, about the price of this book and about anything being said in "The Times" about it?—Not about anything being said in "The Times" about it. I have always said that the price was too high. It seemed to me a preposterous price.

1305. When first did you know anything about "Artifex's" letter?—The morning it appeared in the paper. I read it in the paper.

1306. Was that the first you had seen of it?—Quite the first.

1307. Or the first you had heard of it?—Quite the first.

1308. Had you anything at all to do, directly or indirectly, with the writing of that letter?—Absolutely nothing. At the time I read it I did not know who had written it.

1309. It is part of your duty to see what letters are coming forward for publication in "The Times," or to say what letters shall be put in?—No, nothing at all.

1310. Is that a matter for the editor?—For the editor entirely.

1311. I think you did write to Mr. Murray?—Yes, I wrote to Mr. Murray.

1312. I think that letter was on the 14th October?—I accept that date if it is there. I do not know it.

1313. Did the conversation which you had had with Mr. Bruce Richmond take place some days before that letter was written?—It must have done. Of course, I cannot tell you the date on which I wrote that letter. You say it is the 14th, and it must have been subsequent to the conversation.

1314. At the time you wrote that letter did you know whether anything was going to be inserted in the review about the price, or not?—No, if it was before the review was published. It was the 14th, and the review was published on the 17th.

Cross-examined by Mr. MONTAGUE LUSH.

1315. We have been told by one of the witnesses that the influence of "The Times"—its notices and its reviews, and so on—is considerable on the sale of a book. I suppose you agree with that?—Yes, I believe so.

1316. Did you think that when that memorandum of yours was handed to Mr. Bruce Richmond it would benefit the sale or injure it?—I do not suppose that I thought of it one way or the other. I certainly did not want to injure the sale.

1317. Did you want to help it?—I neither wanted to help it nor to hinder it. As a matter of fact, I was trying to buy copies at that moment.

1318. I know you were?—Consequently I should want to help it.

1319. May I take it that you are asking the Jury to say that that memorandum of yours in your view would be calculated to help rather than to hurt?—No. I do not ask you to say anything of the sort.

1320. Would you mind telling me?—Supposing I

had thought that the book was badly bound, or anything else, I should have thought it a matter of public interest to mention it. I thought of this in the same way—utterly regardless of whether it added to the sale or decreased it.

1321. Regardless, I agree, because that is rather my suggestion?—Regardless of whether it increased the sale or decreased it.

1322. It was indifferent to you whether it did or not?—Absolutely.

1323. I suggest to you it is an indifference of a somewhat other kind than what you mean. Have you ever before given instructions that a reviewer of a book should be asked to say that the price was too high?—Neither before nor now have I given any instructions. Those are not my instructions.

1324. I want to be technically accurate. Had you ever before, or have you ever since, expressed any wish to the Literary Supplement editor that notice should be taken in a review that is coming out of the price of a book?—I have often said that a book should be noticed because it has been produced at such a cheap rate, and I have sometimes said that if it is noticed it should be mentioned that the price was too high.

1325. You have done that?—I have.

1326. To whom?—To Mr. Richmond. I think in that respect he is making a mistake, but I merely made it as a suggestion.

1327. Let me read this letter to you: “But another grave mistake has been committed in the method of publication. The book is one that will create very wide interest in one form or another. It will appeal to every reader in the Empire, and it is difficult to overestimate its educational value if it were accessible to the classes who are apt to believe that wisdom only lies in a democracy; but the three volumes, which easily might have been produced at 10s., and which at a reasonable figure would have sold by hundreds of thousands, are offered to a privileged few at 63s.” Do you doubt that that

would injure the sale of the book?—I do not suppose it would enter into my head.

1328. Please let it now. Think of it and tell me?—I should think it would.

1329. Do you tell me that it never dawned upon you when that memorandum was written?—I tell you that was not the reason why I wrote it.

1330. I did not ask you that?—I do not suppose it entered into my head at all.

1331. Do you tell the Jury as a fact that it never entered into your head when you sent that memorandum out?—I do say absolutely, whether it had that effect or not, that I considered it our duty to say it. I cannot remember whether it entered into my head at the time or not.

1332. You really do not know now whether it had entered into your head or not?—You may say that, certainly.

1333. I suppose you had not seen the review when you wrote the memorandum?—I could not have done.

1334. You began by saying: "But another grave mistake has been committed." Had you any other mistakes that you thought the reviewer was going to mention?—I do not know; I cannot recall the thing.

1335. You had not seen the book when you wrote the memorandum?—I think I had seen the book.

1336. Are you sure?—No, I am not certain. I cannot be sufficiently certain of the date.

1337. It is rather an odd way to begin if you had not seen the book: "But another grave mistake has been committed"?—I cannot recall the circumstances of the case.

1338. I see on October 14th you wrote a letter to Mr. Murray, asking for special terms under which the publishers would sell this book to "The Times" Book Club?—I do not think I asked for special terms. I asked whether he would sell it to us.

1339. At an extortionate price?—Whether he would

sell it to us on the ordinary terms, in the usual way. I do not think I mentioned the terms.

1340. Yes, you did?—Excuse me. Mr. Murray refused to sell to us on any terms, and I said: “In this case, will you make an exception?”

1341. What you say is this: “You may remember that in our original negotiations, two years or more ago, there was some talk of Queen Victoria’s Letters, and you said with regard to this book that you might be disposed to make very special terms”?—Yes.

1342. So you had had a conversation about it?—That was before the starting of the book club, and it was then when we were asking Mr. Murray what terms he would give us, and he said for a book of that sort he might make special terms.

1343. I do not want to waste time over what is not relevant, but you had published in 1903 in “The Times” a notice that the book was coming out, and your letter says: “You may remember that in our original negotiations two years or more ago there was some talk of Queen Victoria’s Letters, and you said with regard to this book that you might be disposed to make very special terms”?—That is what I want to explain to you.

1344. Certainly, if you wish it?—At that time we were asking Mr. Murray what discount he would give us on the books. That was before the book war. Mr. Murray said he would give us so much per cent.—I forget what it was now—but he said that in the case of Queen Victoria’s Letters he might be able to make special terms.

1345. “Are you still of the same mind? The book is of great interest, but the price is such that it can only have an official and circulating-library sale. We are willing to lose a little money on it if you can meet us half way, and would take a very large number if you are disposed in this one case to deal with us direct. If not, we can deal with the small number we have already arranged for; but for the sake of the late Queen we should like to give the book as good a send-off as possible.” At that time had you worked out the profit which you thought

the publisher was going to make?—We knew that the price was very high.

1346. That is not quite the same thing?—I do not know whether I had worked it out. I suppose I had.

1347. Cannot you recollect?—I cannot recollect the exact sequence of events as they passed through my hands.

1348. In order that you may not be left in any doubt about it, let me recall to you that on the 7th October, which is a week before, you had written to Lord Esher to say: "The cost of production of the book"—I mean, of course, the technical production, that is paper, printing, and binding—"cannot exceed 9s. for the three volumes"?—Then that proves I had.

1349. I agree with you?—Quite so.

1350. How were you able to work out the cost of 9s. on the 7th when the book was not sent to you till the 11th?—I would go on the general fact that no book produced in the ordinary way can cost more than 3s. a volume if it is done in sufficient quantity.

1351. Do you tell us that the 9s. mentioned in your letter to Lord Esher is based only upon the idea that it will be an ordinary book published in the ordinary way?—I do. I say that any ordinary book, not containing works of art, can be produced in quantity at 3s. per volume, and these books were.

1352. Is that the foundation for your figure of 9s.?—It is.

1353. Is there nothing more close than that?—Judging from my own experience of many volumes published by myself.

1354. Was that the 9s. which "Artifex" happened to mention in his letter?—I have nothing to do with "Artifex."

1355. Is it a coincidence that you and "Artifex" hit upon the same figure?—He may have taken it from me. I do not know.

1356. What do you think?—I have nothing to do with it.

1357. As a matter of sense, how do you suggest that Mr. Hooper hit upon it—by an accident, or had you spoken to him about it?—I say that if two people with the same experience come to the same idea as to the price, the probability is that their idea is right.

1358. I am not on probabilities now. I am trying to get at facts. Do you tell the Jury now that when "Artifex's" letter appeared with its same figure of 9s you and he had had no communication about the price?—To the best of my belief we had had none whatever on that one book.

1359. None whatever?—I do not think so; but we are in close touch in reference to the cost of printing.

1360. Let me point out to you the difference. You had got it at 9s. before you had seen the book, and he had got at it after seeing it. Is that merely a coincidence?—I suppose he went on exactly the same rule. Any man who has to deal with the publication of books in large quantities knows that a book of that sort can be produced at 3s. a volume.

1361. That is to say, you need not look at the illustrations?—

1362. Mr. ELDON BANKES: It is the paper, printing, and binding?—Paper, printing and binding; but I will add "illustrations," because a book without illustrations would only be 1s. 6d. a book. Busch's "Life of Bismarck" cost me 1s. 6d. a volume.

1363. Do "The Times" sell books at a plundering and extortionate price? What would that book, "The Life of Queen Victoria," cost to produce?—I can tell you exactly.

1364. How much was it?—There were only one thousand copies printed.

1365. Mr. Justice DARLING: The cost of course depends upon the number of copies printed?—I can tell you what I was charged.

1366. Mr. MONTAGUE LUSH: I will take that as the same thing?—The publishers' bill sent in to me was 26s. 3d.

1367. Was that, in your view, a fair price for them to charge?—No, it was not.

1368. Did you say so?—I was comparatively ignorant of publishing in those days, but still I make no complaint. There were only one thousand copies. I think perhaps it was a fair charge, because there were only a thousand copies, and I let them do what they liked; but as a matter of fact it cost 26s. a volume.

1369. You published it and sold it at two guineas?—The price, also fixed by them, was two guineas.

1370. Do you think that extortionate or fair?—There were only one thousand copies. We made £500 or £600 out of it.

1371. Was it a fair or extortionate price?—I think the price was too high. If I were doing it now I should do it at less. That was in my unregenerate days.

1372. Now will you look at that book, “The History of the War in South Africa”? Was that published in your regenerate days or in your unregenerate days?—That is being done now. It is not finished yet.

1373. What price is being charged for that?—We are trying to get five guineas.

1374. For how many volumes?—Six—17s. 6d. a volume.

Mr. Justice DARLING: This book is “The History of the War in South Africa.”

1375. Mr. MONTAGUE LUSH: Consisting of articles already published in “The Times”?—No; you are perfectly wrong. Not a single word of that has appeared in “The Times.”

1376. Do you consider that a fair price?—I do.

1377. Mr. Justice DARLING: There are a lot of maps and other things in this book. I do not see how it is possible to compare such a book as this?—I may say, my Lord, that there have been three voyages to South Africa in connection with that book, and if we can get out of it without a loss I will be very pleased.

1378. Mr. MONTAGUE LUSH: Do you still justify, after what you have heard, the statement that 9s. was the

cost of the production of these three volumes ?—Absolutely. I can prove it from Mr. Murray's accounts.

1379. As I understand your letter of the 14th October, you were willing enough to take a part in the sale of the book sold to you at the published price ?—Not at the published price.

1380. I think your reduction was because you took a quantity ?—I was perfectly willing to buy them at half price, which was the price at which Mr. Murray sold them to Messrs. W. H. Smith.

1381. If you thought it was plundering the public to sell it at that price, I do not understand why you were willing to take part in it.

1382. Mr. ELDON BANKES : We lend it out ?—I should sell it on the conditions that Mr. Murray imposed, which would be to sell it at three guineas, if he would have sold it to me.

1383. Mr. MONTAGUE LUSH : You did not mind making the public pay plunder, of course, if it could have been sold by the publishers ?—I could not have sold it except on those conditions.

1384. You were quite willing to accept those conditions if you could have made a bargain with Mr. Murray ?—I was willing to sell the book to the public if Mr. Murray had allowed me to do so.

1385. Now may I ask you to turn to the letter of "Artifex" ?—When did you first hear that "Artifex's" letter had emanated from Mr. Hooper ?—I cannot remember. I should say the next day. I probably asked, or perhaps I did not ask until Mr. Murray's complaint.

1386. Which do you think ?—I cannot remember. I think I knew the next day. You may take it at that.

1387. This is a letter in large type. On whose judgment is it that a letter to "The Times" is published ?—The editor's.

1388. That is no concern of yours ?—None whatever. I should not be even in the room.

1389. I suppose you would agree with me that a letter in large type like this, beginning "Your reviewer,"

would indicate to the reader of "The Times" that it is a letter of an independent correspondent?—I do not think so, necessarily.

1390. What do you think?

Mr. Justice DARLING: You do not approach this subject with the same knowledge as a newspaper man.

1391. Mr. MONTAGUE LUSH: I do not suggest I do, my Lord. Was this not intended to indicate to the public that this was the letter of an independent correspondent?—No.

1392. Not at all?—No.

1393. Do you mean to say that in your view the public reading this letter would suppose that it might emanate from "The Times" themselves?—It might emanate from any person connected with "The Times."

1394. You might have written it yourself?—I might have written it myself.

1395. You think it would be equally fair if you had begun as this begins: "Your reviewer," and said so and so?—No, because he would be my reviewer in a sense.

1396. But he is the reviewer of "The Times," not of you?—Precisely.

1397. Mr. Hooper is the manager of a department of "The Times"?—Nothing to do with "The Times." It is situated three miles away from "The Times."

1398. "The Times" Book Club?—"The Times" Book Club is a totally independent organisation.

1399. You think this letter might indicate to those who read it that the head of "The Times" Book Club might be "Artifex"?—Yes, possibly, if he chose.

1400. I will ask you about the statement in it presently, but you told us you knew the next day that it came from "The Times" Book Club?—I should think so—yes.

1401. If you saw Mr. Hooper about it on the 20th, I suppose you would say to him: "What a strange thing, you hit upon 9s., and so did I." Did you say that to him?—No, I should not have thought it strange at all.

Anybody knowing anything about books would have hit upon 9s., or 10s., or something like that.

1402. It is a strange thing that happened. Your memorandum which you had given to Mr. Bruce Richmond contained the figure of 10s.?—Yes.

1403. That was your figure?—Yes.

1404. Why had you altered it to 9s.? Your letter of the 7th mentions 9s. as the figure?—That is allowing a margin. I say 9s. or 10s. is about the price.

1405. You see how odd it is. You fix upon 9s. as the price on the 7th October, and you put in 10s. as the price on the 11th October, and “Artifex” of “The Times” Book Club comes back to 9s. on the 19th October?—

Mr. Justice DARLING: What Mr. Bell wrote was that three volumes might easily have been produced at 10s. I suppose what might easily have been produced at 10s. might possibly be produced at 9s.?

1406. Mr. MONTAGUE LUSH: Possibly. If you can do it easily at 10s. you can do it with difficulty at 9s., and perhaps with still more difficulty at 7s. 6d.?—You must remember the quantity printed makes an enormous difference.

1407. I want to see if we can clear up this strange coincidence about the price. Did you mention to Mr. Hooper, or did Mr. Hooper mention to you, when the “Artifex” letter appeared, how the 9s. had been arrived at?—No; I did not.

1408. Nothing was said about it?—I do not remember that anything was said about it.

1409. Let us see what happened afterwards. When you got the letter from Mr. Murray’s solicitors they told you that the statement was untrue about the cost?—Yes.

1410. Did you believe their statement?—No, I cannot say that I did. If they had paid a proper price I know they could not have paid much more than 9s. or 10s., and I found out, as a matter of fact, that they paid about 10s.

1411. You knew by that time that “Artifex,” Mr.

Hooper, had hit upon a hypothetical figure of £1,000 each paid to the authors, and worked out the net profit to Mr. Murray personally. As my Lord has pointed out, the passage is : " Coined for his own enrichment." You observed that " Artifex " had stated that the whole of the profit, which he had put at 32s., went into Mr. Murray's pocket. Did you observe that ?—Naturally. I read the letter.

1412. Did you believe when you saw it that there was any foundation justifying you or Mr. Hooper in saying that ?—I had not gone into the question then. I believed it, of course, at the time.

1413. At what time ?—At the time of that.

1414. At the time of " Artifex's " letter ?—After seeing " Artifex's " letter it seemed to me a fair deduction.

1415. A deduction from what ?—From the figures given by " Artifex."

1416. You knew " Artifex " was " The Times " Book Club ?—Yes.

1417. Did you ask him what material he had to enable him to say that Mr. Murray was putting into his own personal pocket 32 pieces of silver ?—No, I cannot say I did. I think he used the term " Murray " solely to imply whoever was the general publisher.

1418. You thought that Mr. Hooper used the word " Murray " to denote whoever was what ?—I think the letter was badly worded. It was the difference between the cost of production and what the public paid for it.

1419. The 32 pieces of silver in " Artifex's " letter is the net sum that remains after paying the authors. Did you observe that ?—I suppose I observed it.

1420. I want to know if you did. I do not want any supposition, because I am going to what is very serious in this matter. Did you observe it or not ?—I did not read the letter very carefully, but I suppose I observed it when I read it.

1421. That is the whole tone of the letter, is it not ?—I suppose it is. May I read the letter ? I have not read it for a long time.

Mr. Justice DARLING : It is put in this way : " So the hocus-pocus goes on. There are plenty more examples. *Qui se trompe ici ?* The public, at any rate, are no longer so easily deceived as they were, and the tables may be turned even upon Mr. John Murray."

1422. Mr. MONTAGUE LUSH : Do you doubt that when you saw that letter on the morning of the 19th and saw Mr. Hooper that you knew it was an attack upon Mr. Murray personally ?—Undoubtedly I knew that.

1423. And you knew also that the thousand said to have been paid to each author was a mere guess or leap in the dark ?—Evidently that was a guess. It was an attack upon the publisher generally.

1424. I want you to tell the Jury whether when you saw what had been written by " Artifex " and saw the attack made upon Mr. Murray, did you wish to do justice to Mr. Murray or not—to put things right ?—We inserted—

1425. Would you mind answering the question ? Was it your desire to see that justice should be done to Mr. Murray ?—

1426. Mr. Justice DARLING : I think you ought to put a preliminary question as to whether the witness had anything to do with what was done after " Artifex's " letter ?—That is what I was trying to answer, my Lord. I was anxious to do exactly what my solicitor advised.

1427. Mr. MONTAGUE LUSH : And no more ?—And no more.

1428. Were you consulted when the solicitors' letter was sent to " The Times "—the letter from Messrs. Johnsons, Long & Co., of October the 24th : " Our client, Mr. John Murray, has instructed us to communicate with you "—?—I remember the letter ; you need not read it.

1429. I had better read it. " The work is not Mr. Murray's property. He has merely been employed as a publisher, bearing the cost of its production, which far exceeds the figures in the letter, and he will be remunerated by a fraction of the net profits. That is to say,

there will be no lump sum paid, but he gets his share or proportion." Did you read that letter?—Yes, I did.

1430. Did it occur to you that it would be only just to Mr. Murray to contradict the statement in "Artifex's" letter?—I left it to our solicitor to do what he considered right.

1431. That is not quite the same thing as answering the question. Did it occur to you that justice to Mr. Murray required that the misstatements in "Artifex's" letter should be corrected?—If there were any misstatements we were ready to correct them, but I did not admit that they were mistakes.

1432. You are told of them here?—I am told of them on the authority of Mr. Murray, who told me that he got a fraction only of the profits, and by a "fraction" I thought he meant a tenth or one-hundredth part.

1433. Did you believe that statement of Messrs. Johnsons, Long & Co.?—No, I did not.

1434. Which of the statements did you not believe?—I did not believe, in the ordinary meaning of the term, that Mr. Murray was paid only a fraction of the profit, because by that any man would think, and I have put it to several people, "What does that mean?" And they have said, "Well, something less than 1 per cent."

1435. Did you believe that at all events the author did not get a round sum, but got a share of the profits?—I do not know what I believe on that point.

1436. It is surely fair to Mr. Murray for you to tell me now. You must recollect?—I knew nothing whatever of the thing beyond that letter, and I left it to the solicitor. It was a solicitor's letter that I received, and I never reply to a solicitor's letter. I leave my solicitor to reply to it.

1437. When you got the letter, did it occur to you that your "Artifex's" letter might turn out to be libellous?—Yes; that would occur to me.

1438. When you had a statement made to you, which, if true, would make the letter libellous, did you take steps to ascertain if Messrs. Johnsons, Long & Co.'s

statements were true or untrue?—I left it to my solicitor.

1439. Entirely?—Entirely.

1440. And you were guided by them?—I was guided by them.

1441. Mr. Murray's solicitor sent you a form of apology which, if you had inserted it, would have stated that you were satisfied that the statements in the letter of "Artifex" were absolutely erroneous?—Yes; I could not publish that, of course.

1442. Why not?—Because they were not erroneous. The statement that the cost was 10s. I considered was still proved.

1443. Proved?—Was still accurate and is now proved.

1444. Do you really believe that?—I am prepared to prove it.

1445. You shall have ample opportunity of proving it, but apart from that, will you deal with what I am putting to you? The payment to the two authors of £1,000 each has been contradicted in the solicitor's letter. Please let us fasten our attention on that for a moment. Did you take steps to ascertain if that was true?—You must ask my solicitor.

1446. I am asking you?—I left the whole thing to my solicitor.

1447. You can tell me if you took any steps yourself, or not?—No, I did not myself.

1448. Instead of publishing the apology that had been sent to you this paragraph appears in "The Times" on the 26th October: "The Letters of Queen Victoria. In our issue of the 19th inst., under this heading, we published a letter signed 'Artifex.' With reference to this letter, Mr. John Murray's solicitors write to say the work is not Mr. Murray's property; he has merely been employed as publisher, bearing the cost of its production, which far exceeds the figures in the letter, and he will be remunerated by a fraction of the net profits. We willingly give publication to this statement, and regret any misstatement or error our correspondent

may have made." At that time you knew that your correspondent was the manager of "The Times" Book Club?—Yes.

1449. On whose advice was that inserted?—On our solicitor's advice.

1450. Did he communicate with you before inserting it?—Yes.

1451. Did he submit the draft of it to you?—Yes.

1452. As it is put into "The Times"?—As it is put into "The Times."

1453. With no alteration?—I think there was no alteration.

1454. Have you got the draft that he sent to you?—I do not know. I do not think so.

1455. I call for it. (Same produced.) I see the word "publication" has been altered to "production"?—There were two alterations as far as I remember.

1456. Who made those alterations?—I think Mr. Soames made them himself. I think in talking over it probably I suggested that one word was better than the other.

1457. I see "miscalculation" has been altered to "misstatement"?—Yes.

1458. That was inserted with your assent in "The Times" of October 26th?—Yes.

1459. Did Mr. Hooper or Mr. Ross tell you they were going to write another letter as "Artifex" on this subject to "The Times"?—They did. I knew they were writing the letter.

1460. Which of them told you that?—I think Mr. Hooper told me.

1461. What did he say?—He said he wanted a letter to get in in reply to the other.

1462. Your "Times" Book Club manager tells you, the manager, that he wants to get in another letter in reply to what?—In reply to the statement of Mr. Murray which we had published.

1463. Do, please, attend. "The Times" publish this so-called apology on the 26th, and "The Times" Book

Club tells you, "The Times," that he wants to write and contradict it. Is that what occurred?—It is not a contradiction.

1464. He said he wanted to write a letter in answer?—In answer to Mr. Murray's statement which we published.

1465. I say so?—But it is not contradictory of Mr. Murray's statement.

1466. I will take your expression. "The Times" Book Club want to send to "The Times" another large-type letter by "Artifex" in answer to the apology that "The Times" has put in containing a statement of Mr. Murray's. Does that strike you as a somewhat circuitous way of reproducing the libel?—You do not realise the wholly separate organisation of "The Times" Book Club and "The Times."

1467. I do not for this purpose?—I admit the responsibility is there for both; but the two concerns have different interests, deal with different subjects, and even quarrel, I am sorry to say, sometimes.

1468. The interest of "The Times" Book Club was to injure the publisher?—I do not know what their interest was.

1469. The interest of "The Times" was to do what—to help Mr. Murray, or to injure the book?—The interest of "The Times" is to speak the truth and put in impartially from both sides anything that is sent, however abusive.

1470. Do you call it both sides when "The Times" Book Club is one of the sides?—I say both sides—"The Times" Book Club being one and the publishers being the other.

1471. I thought "The Times" Book Club was really affiliated to and part of "The Times"?—I am trying to relieve your mind of the idea that our interests are identical. We are responsible for "The Times" Book Club.

1472. If "The Times" Book Club makes a profit, to whom does it go?—They are identical in that sense.

1473. If "The Times" Book Club incurs a loss, who has to pay it?—Not the same people.

1474. The profits and losses of "The Times" Book Club are the profits and losses of "The Times," are they not?—No.

1475. Whose are they?—"The Times" and somebody else's. My Lord, am I bound to answer all these questions about my private business?

Mr. Justice DARLING: You have not been asked who it is. I have not interposed because Mr. Bankes has not.

Mr. ELDON BANKES: I desire to let my friend go on with it legitimately.

1476. Mr. MONTAGUE LUSH: Was it Mr. Hooper or Mr. Ross who said they wanted to put in an answer to this statement?—I told you it was Mr. Hooper.

1477. Was the letter submitted to you before it was published?—I did not read it.

1478. I did not ask you that. Was it submitted to you before it was published?—What do you mean by "submitted"?

1479. Were you given an opportunity of seeing it?—No; I do not think I was.

1480. Were you consulted as to the contents of it?—No; I do not think I was.

1481. Do you doubt that you were. Just consider the position. Here is a threat of an action for libel—because that is in substance what the letter of Messrs. Johnsons & Long was?—Will you allow me to say that the question of whether a letter is published or is not published is a matter with which I have absolutely nothing to do? That goes before the editor, and the editor publishes it if he likes, or refuses it.

1482. Is the editor of "The Times" in court?—No.

1483. Did you communicate with the editor when the threat of an action of libel had been sent on the 20th of the month?—No.

1484. Not at all?—I do not think so.

1485. Were you going to allow the editor of "The Times" to insert another letter by "Artifex" which might be libellous without warning him?—He would see all the proceedings that had taken place; that is to say, he would see the memorandum that we inserted.

1486. Would he also see and know that "Artifex" is another name for the manager of "The Times" Book Club?—Yes.

1487. Now let me refer to the second large-type letter in answer to the so-called apology?—

1488. Mr. Justice DARLING: Has this name of "Artifex" been used before?—Not to my knowledge.

1489. The editor of "The Times" would not know it as a common *nom de plume* of Mr. Hooper?—Oh no. It was a name chosen, I do not know why or how.

1490. Mr. MONTAGUE LUSH: It is an unfortunate name, because if you look in the dictionary you will see what it means. "A cunning inventor," I believe, is one of the meanings. Now let me read the second letter of "Artifex": "Sir,—I observe in your issue of to-day that Mr. Murray takes exception to the accuracy of my statement about 'The Letters of Queen Victoria.' I regret very much that I have done Mr. Murray an injustice, and I can assure him that it is merely an accident that his name appears in the matter rather than another's. Any publisher bringing out a book of that kind at that price would have merited precisely the same strictures which, it must be remembered, are only a portion of the controversy in which Mr. Murray has personally taken a considerable part. If the work is not Mr. Murray's property, there is nothing that can offer the least indication of the fact." Do you agree with that?—Yes, I think I do.

1491. You had written to Lord Esher on the 7th October, recognising that it was that gentleman who could control the price?—No.

1492. Let me read your letter?—Not control the price.

Mr. Justice DARLING: You have not identified the

witness with Mr. Hooper. We may take it that although written by Mr. Ross, it is really Mr. Hooper's letter.

Mr. ELDON BANKES: I am going to call Mr. Hooper, my Lord.

Mr. Justice DARLING: You have not identified Mr. Hooper or Mr. Ross with Mr. Moberly Bell, and what is said here is that there is nothing to indicate it. It does not refer to a letter written by him.

Mr. MONTAGUE LUSH: My point is this, that the manager of "The Times," even if not consulted before this letter was published, sees it in the paper the next day and knows it is not true. This letter to Lord Esher shows he knew it. That is the point of my cross-examination.

Mr. Justice DARLING: Very well.

1493. Mr. MONTAGUE LUSH: When you read this letter on the 29th October, if you had never been consulted before, you knew that that was inaccurate?—I did not know that it was inaccurate as far as you have gone at present. Will you, please, go on and tell me where the inaccuracy exists?

1494. Was there nothing to indicate the fact that the work was not Mr. Murray's property?—Nothing.

1495. Did not you know it was not his property?—No, I did not.

1496. When you wrote to Lord Esher on the 7th October—going back for a moment to that letter—you asked Lord Esher to reconsider the price of the book?—Naturally.

1497. You must have known that Lord Esher therefore had at least a property in the book?—Not at all. One writes to an author and says: "Your publisher is bringing out your book at too high a price; cannot you do something to reduce it?" That does not mean that the property is not in the publisher.

1498. The point of my question is that you knew Lord Esher had an interest in a share of the profits?—I did not. I had not the remotest idea of that until Mr. Murray's letter came in.

1499. The letter of the 20th had told you so—

1500. Mr. ELDON BANKES: No, indeed it had not. Will you please read it?

Mr. MONTAGUE LUSH: I have read it twice.

1501. Mr. Justice DARLING: The publisher has a fraction of the cost?—That does not mention Lord Esher, or anybody else.

1502. Mr. MONTAGUE LUSH: You knew from your letter that Lord Esher was a gentleman to be considered? —I knew he was one of the authors, and I wrote and said: “ Cannot you induce your publisher not to publish at this ridiculous price? ”

1503. There can be no room for misunderstanding between us. You knew that Lord Esher was one of the authors, and you knew that the author was getting a share, because the letter says £1,000 each, and you are told on the 20th that Mr. Murray is only getting a proportion or share of the profit?—A fraction.

1504. Which means something less than the whole, or half if you like?—Yes.

1505. You knew that Lord Esher was interested in what remained?—I did not. There is no necessary exclusion of anybody else. On the contrary, my view was something entirely different.

1506. I am going on with this second letter of “ Artifex.” “ It bears Mr. Murray’s name, and would be supposed by any one to be his”—that is, the property in the book would be supposed to be Mr. Murray’s. Did you believe that to be true?—Yes; in the sense in which it is written.

1507. In what sense did you think that was true?—The person whose name appears on the book is the person responsible for the whole thing.

1508. The point of this statement is the property, which means the right to the profits, does it not?—Yes; the person who has the sole right of publication, for instance.

1509. The right to the profits?—Yes; I thought he had a right to the whole of the profits.

1510. You thought on the 29th October that Mr. Murray had a right to the whole of the profits?—I thought he took the whole of the profits—the difference between the cost of production and the price which the public paid. It did not concern me to whom the profits went. I considered the profits were exaggerated. That was the whole contention.

1511. "If the cost of production greatly exceeds the figures I gave, Mr. Murray has not bought in the best market, as I was entitled to assume he would." What do you think that conveyed?—I think it conveys a fact.

1512. What fact?—That if it cost more than 3s. a volume, then he had not done his business properly—he had not done it as cheaply as he could have done it.

1513. Did you know at all about the cost of sending photographers, as he has told us, of the first eminence to Windsor and Buckingham Palace?—I took that all into consideration, and I still say that the price is less than 10s.

1514. Had you taken it into consideration when you hit upon 9s. as a figure?—No, I had not; but I knew that with any extra expenses of that sort it must be still less than 10s.

1515. "If there is some more expense in connection with the production, Mr. Murray's case would be strengthened by his telling us what it is. He is to be remunerated by a fraction of the net profits. What fraction? A fraction is anything less than the whole. In the absence of anything to indicate that the book is not brought out by Mr. Murray in the ordinary way, I submit that my criticism of the price was entirely natural and justifiable. The price is the main thing. Whether it is charged by Mr. Murray or by Mr. Snooks is of no consequence. The price is exorbitant, and Mr. Murray cannot be surprised if it is supposed to be for his benefit, until we know for whose benefit it is charged." Do you think that that letter is a fair and proper one?—I have nothing to do with the letter.

1516. You are the manager of "The Times" ?—

Mr. ELDON BANKES : May I interpose with regard to this ? If Mr. Moberly Bell was responsible for this letter, I agree he might be asked about it, because it might affect his motive, or he might be asked about it if it was the libel ; but it is neither one nor the other, and I submit the time has come when I may legitimately object. I do not want to object to anything unreasonably.

Mr. MONTAGUE LUSH : We have got to look at all the circumstances, because fair comment is pleaded, and if we find that this gentleman, when he sees this letter in his own paper, knowing that it comes from "The Times" Book Club, does not correct what, I submit to the Jury, are misstatements, and which he knows to be misstatements, then that is evidence which goes to damages.

Mr. Justice DARLING : It is not this letter to which fair comment is pleaded. It is the other letter.

Mr. MONTAGUE LUSH : I know ; but his conduct with regard to this letter is evidence.

Mr. Justice DARLING : He is not the author of this letter, nor is he the editor of "The Times," nor is he the manager of "The Times" Book Club. He is connected with "The Times," but he is not "The Times," you know.

Mr. MONTAGUE LUSH : No ; but the gentleman managing "The Times" cannot put the responsibility on to another, when he knows the facts, and allows this letter to go unchallenged.

Mr. Justice DARLING : You have asked him whether he thinks that fair comment.

Mr. MONTAGUE LUSH : I have asked him whether it is fair to allow that statement to go out uncontradicted.

Mr. Justice DARLING : He did not allow it to go out, you see.

Mr. MONTAGUE LUSH : Uncontradicted he did.

Mr. Justice DARLING : He did not contradict it afterwards. There is that to be said about it.

Mr. MONTAGUE LUSH : He is the manager of "The

Times," who can and ought to see that the thing is conducted without injuring another person.

Mr. Justice DARLING : I do not think the question is strictly relevant.

Mr. MONTAGUE LUSH : I press it, my Lord. I submit there is no answer to the right to put that question.

Mr. JUSTICE DARLING : There is no need for me to take a note, because the shorthand writer is doing it.

Mr. MONTAGUE LUSH : I do attach importance to it, my Lord.

Mr. Justice DARLING : I do not think, strictly speaking, you are entitled to ask it.

1517. Mr. MONTAGUE LUSH : Then I will pass from that letter. Now let me come back to "Artifex's" first letter. Will you tell me whether you agree that this letter, which you know pretty well now is an attack upon Mr. Murray personally ?—I do not think it is an attack on Mr. Murray personally. It is on Mr. Murray as a publisher—on his publishing business.

1518. I cannot cut him into two like that. Is it an attack upon Mr. Murray ?—On Mr. Murray's publishing practices, which are those of the whole trade.

1519. Do you consider now that it is just to call him an extortioner ?—I think that there are a great many words in the letter which it is unfortunate we used.

1520. Is that all you can say for him ?—I think the letter on the whole was just ; but you have to bear in mind that there had been very violent language used by Mr. Murray. We gave the same large print to a letter sent in by Mr. Murray which contained these words : "And I tell the editor of 'The Times,' in my best Californese, to go to the devil." That was a letter from a Miss Gertrude Atherton, but I believe Mr. Murray sent it.

1521. Do you really say to the Jury that you believe a letter from somebody else was sent by Mr. Murray, and you put it on a footing with the statement in "Artifex's" letter ?—No. I am only trying to show

you that the language used was very violent on both sides of the controversy, and we were publishing with absolute impartiality a great deal that I think it would have been better if we had not published.

1522. I will go back to anything you like to give vent to about Mr. Murray, but I do beg you to say what you know, and not what you have been told.

1523. Mr. Justice DARLING : Mr. Bell says that very violent language was used on both sides, and that "The Times" published on both sides language which he thinks it better not to have been published ?—Which I think is regrettable.

1524. Mr. MONTAGUE LUSH : Why did not you stop the publication as manager of "The Times" ?—Because I had no power to do it. I have no control over what appears in "The Times."

1525. Surely your evidence with the editor is not nil. Did you ever see the editor about it ?—I should never have interfered with the editor any more than the editor would interfere with me.

1526. Mr. Justice DARLING : Who was it that you say Mr. Murray told to go to the devil ?—I did not say that, my Lord. What I said was this : There was a letter published in "The Times" from Miss Gertrude Atherton which contained that expression. Miss Gertrude Atherton was a client of Mr. Murray, and Mr. Murray, I think, sent it in. At all events, we had a long correspondence with Mr. Murray on the subject of Miss Gertrude Atherton, and that expression appeared in one of the letters published in "The Times."

1527. Miss Gertrude Atherton had her books published by Mr. Murray, and Miss Gertrude Atherton published in a letter in "The Times," I gather, an expression which was quoted from California that she would tell some one to go to the devil ?—She said the editor of "The Times" might go to the devil.

A JUROR : Is that a libel, my Lord ?

Mr. Justice DARLING : The question of whether a thing is a libel or not is always for a Jury.

The WITNESS : I only quote that as an instance of the strong expressions that were used on both sides.

Mr. Justice DARLING : If he did take Miss Atherton's advice it would greatly increase the circulation of "The Times"—supposing the publication was still continued.

1528. Mr. MONTAGUE LUSH : I hope that does not account for his not being here to-day ?—No.

1529. Do you tell us seriously that because you believe the letter of the lady giving this unpleasant message to the editor of "The Times" that that excuses it ?—No, I do not.

1530. Give me something, if you have anything, which will excuse a statement like that in "Artifex's" letter, or else admit frankly that there is nothing to excuse it ?—I say the letter was justifiable, but was couched in too strong language.

1531. Did you think that the language was unfair to Mr. Murray ?—No, I did not, in all the circumstances of the case.

1532. Who is referred to, in your view, by the reference to his getting 32 pieces of silver ?—I suppose it is obvious.

1533. Was that not unfair to Mr. Murray to compare him to Judas ?—It was unkind and unnecessary.

1534. Is that all you can say for him ?—I deprecate all these strong expressions in correspondence; but Mr. Murray has said very strong things against us, and I suppose these correspondents when they get excited write things which I should not have written myself.

1535. You will have an opportunity of telling me the worst that Mr. Murray has ever written. You have not given me anything yet. But, apart from that, do you think it right to say that it is only unkind to compare him to Judas Iscariot in the public columns of "The Times" in large-typed letters ?—I say it was regrettable.

1536. Do you think it was just ?—In all the circumstances of the case ?

1537. Yes ?—It was too strong an expression. I will not say more than that.

1538. Was it not unjust?—I cannot say.

1539. What do you think?—I cannot say more than I have said. It is not my expression, remember I have not to defend it. I should never have used it myself.

1540. Did you tell Mr. Hooper before he published his second letter that he had used language which was regrettable, and which you would not have used yourself?—No, I do not suppose I did.

1541. Why not?—I do not know. Why should I?

1542. I can suggest that if you wanted to be fair to Mr. Murray you would naturally have told him that?—I do not understand your insinuation.

1543. That you were not fair to Mr. Murray is my insinuation?—This was a correspondence going on between two people—at least I assumed the other side would reply. I thought Mr. Murray was going to reply, and I was not going to interfere in the matter.

1544. A solicitor's letter threatening a writ is not an agreeable thing even to "The Times." It generally puts a stop to libellous correspondence?—We are very much accustomed to them.

1545. Do you take any notice of them?—We send them to our solicitor.

1546. And are guided by him?—Yes.

1547. Do you allow the property of the shareholders of "The Times" not to be protected by you?—

Mr. ELDON BANKES: I submit that my friend is going too far.

Mr. Justice DARLING: Remember what the issue here is, Mr. Lush.

Mr. MONTAGUE LUSH: It is fair comment.

Mr. Justice DARLING: He is not a personal Defendant. He is not sued personally.

Mr. MONTAGUE LUSH: He is responsible, my Lord.

Mr. Justice DARLING: He is the manager, and he is responsible for what he does.

The WITNESS: A manager is bound to take the advice of his solicitor on a legal point. You would not recommend me to act contrary to the law.

1548. Mr. MONTAGUE LUSH: I will not pursue it. Now I will come to the question of the cost of production. Do you observe that 32s., which this letter says Mr. Murray gets, is a statement of what he personally puts into his pocket after paying the authors?—Yes.

1549. Do you now say that, in your view, that is a correct statement?—No, that is an incorrect statement—since proved to be incorrect.

1550. When did you first ascertain that it was an incorrect statement?—I suppose at the beginning of this case.

1551. Do you mean since the case has been on in court?—Not since it has been on in court, but about a fortnight before. When we got the copies of Mr. Murray's account I found that Mr. Murray took one-third and the other two took a third each. From that time I saw it was technically incorrect to say that Mr. Murray got the whole 32s., but that it was divided between three people instead of all going to one. There were three people to share it.

1552. Although you have known that for a fortnight, you will not accept my suggestion that it was unjust to compare him to the traitor who got the 30 pieces of silver?—

1553. Mr. Justice DARLING: If you force one to be very strict, that is a question for the Jury?—May I say that when I say that is not unjust I am judging by the facts we had before us at the time. If you ask me now it is quite another thing.

1554. Mr. MONTAGUE LUSH: Then I think I am entitled to ask you now. With your present knowledge do you agree with me that it is unjust?—It is inaccurate, to the extent that it is divided amongst three instead of all going to one.

1555. You cannot give me any material upon which the 9s. is arrived at, because you have told me that it is your general knowledge about the general cost of producing an ordinary book?—It is based on the cost at which I have produced a great number of volumes myself.

1556. It is not based upon any actual figures?—It was not at the time it was written.

1557. It is now?—Now I can base it on the figures that Mr. Murray has supplied.

1558. Let me take them?—I have taken the whole cost of 12,220 sets.

1559. Taking the yield as 10,000, do you accept the figures of 7,500 at 40s. 6d. and 2,500 at 45s.?—You must give me a copy of what you are reading from.

Mr. ELDON BANKES: We can give you the extract from your own books.

The WITNESS: I have only seen the ledger page.

Mr. MONTAGUE LUSH: You can give me any document you like, but Mr. Bankes used these figures himself.

Mr. ELDON BANKES: They are the totals, but we can give you the details.

1560. Mr. MONTAGUE LUSH: Very well, I will take your own statement. Will you give me the total proceeds of the 10,000 copies as shown in any document that you have?—I am trying to show you what the cost of production is, not the proceeds. The proceeds have nothing to do with the cost of production.

1561. But in order to get at the profit you must deduct what it has cost the firm to publish the work. That is obvious, of course?—Yes.

1562. Therefore we must first deal with what it cost to publish the work, and we will get at the profit afterwards. Take the figure of £7,060. That is the figure that Mr. Bankes used?—I do not know how Mr. Bankes arrived at it from these figures.

1563. He certainly did?—

1563A. Mr. ELDON BANKES: There are other items included in that?—Yes, that is adding the editors' amanuenses. In speaking of the cost of production of the book, you mean, I take it, the cost of paper, printing, binding, and illustrations. That is all.

1564. Mr. MONTAGUE LUSH: May I take it that your 9s. is confined to paper, binding, printing, and illus-

trations? Is that right?—That is right; but my figure was 10s., you will remember.

1565. We are getting on?—I beg your pardon; 10s. was the figure in the memorandum.

1566. Now you are aware, and I suppose you have been aware for some months, that Mr. Murray had also to pay the amanuenses so much?—Of course.

1567. And corrections so much?—They are included in the printing.

1568. He had to pay the amanuenses?—That I do not include. That is authorship. That has nothing whatever to do with the cost of production.

1569. I am going to ask you if you still say that Mr. Murray put anything like 32s. into his packet?—Yes; I am asking you to let me show it to you.

Mr. Justice DARLING: Mr. Moberly Bell is trying to justify his statement that the proper price for producing three volumes is 10s.

The WITNESS: That is the only statement I made.

Mr. Justice DARLING: And he says he can do it.

Mr. ELDON BANKES: From Mr. Murray's own figures.

Mr. Justice DARLING: Yes. I understand the cost of production is put by Mr. Bankes at £7,060.

Mr. ELDON BANKES: No, my Lord. In the £7,060 there is not only the cost of production, but the cost of what we call the plant.

Mr. Justice DARLING: If you look at page 36 of the shorthand notes you will see it all set out: “(Mr. Eldon Bankes): Now let me come to the next point, because we cannot get any nearer to each other on that point. It is a fact, is it not, that if you take the debit side of this account the whole cost of the production of the 10,200 copies comes to £7,060 16s. 9d.?—Yes. Q. That includes the plant—(Mr. Montague Lush): Did you ask him that? (Mr. Eldon Bankes): I will read out what it includes. It includes printing 10,000 copies, £1,344 12s. 2d.; stereotyping, corrections, etc., paper, £813 12s. 3d.; illustrations, £1,778 7s. 11d.; binding 10,000 copies, £1,742 10s.; ditto, designs, £6 16s. 6d.;

ditto, blocks, £9 5s.; prospectus, order forms, etc., £174 6s. 3d.; carriage, cab fares, etc., £1 16s. 8d.; editors' amanuenses, £935 15s.; insurance, £3 15s.; advertising £250. If you add those together you will find they come to £7,060 16s. 9d."

Mr. ELDON BANKES: Yes; that is taking the debit side of the account. We do not agree that that is properly called cost of production. Mr. Murray agrees with me what "cost" means, and on page 32 he says that his statement in his agreement is a very good definition of what is meant by "cost."

Mr. Justice DARLING: But you add up the items to him.

Mr. ELDON BANKES: Merely from the authors' ledger.

Mr. Justice DARLING: Which of them do you say is not fairly to be called cost of production?

Mr. ELDON BANKES: The editors' amanuenses, £935 15s., and the illustrations, £1,778 7s. 11d. Those two figures stand by themselves.

The WITNESS: That is not quite right. I have the figures, if I may give them to you.

Mr. MONTAGUE LUSH: In my view, my Lord, this is all beside the point.

Mr. Justice DARLING: Mr. Moberly Bell has some figures. Let us see if we can get them from him.

The WITNESS: There were printed 12,220 sets.

1570. Mr. MONTAGUE LUSH: You must keep to the 10,000. If we go into the second edition it will obscure it?—Of course, the 12,000 makes it cheaper, but I will take the 10,000 if you like. Printing, £1,344 12s. 2d.; paper, £813 12s. 3d.; illustrations, £1,778 7s. 11d.; and binding, £1,758 11s. 6d.

1571. I believe you have included the designs and blocks in that?—I have. I have put them all together.

1572. What else is there in your figures?—Nothing else—only printing, paper, illustrations, and binding.

1573. Mr. Justice DARLING: What Mr. Moberly Bell has left out from what I read out just now, which made

up the £7,060 16s. 9d., are: editors' amanuenses, £935 15s.; insurance, £3 15s.; and advertising, £250. That is what he has left out, and nothing else?—I have not quite finished, my Lord. Those figures if added together come to £5,695 3s. 4d. Then there is the profit made on the sale of plates and prints, £281 18s. 2d.

1574. Mr. MONTAGUE LUSH: Where on earth do you get that figure from?—It is in your account. I got it from your ledger.

1575. I will deal with that separately, because you will see that it has nothing on earth to do with it?—It has everything to do with it.

1576. If you persist in saying that, you must give me your reasons why you do say it?—If you put down in the cost the whole of the cost of the illustrations you must put down in the receipts, or in reduction of the cost, whatever you have received from the sale of those plates.

1577. That is assuming you have sold the plates?—It is assuming nothing of the sort, if you will allow me to say so. Here is the proof that prints have been taken from those plates, producing a profit of £281.

1578. I will leave it as it stands for the moment?—Very well. You must take off £281 18s. 2d.

1579. You will find that you will not keep it. Now what else is there?—Nothing.

1580. Is it those figures which justify the statement in the memorandum that 10s. was the cost of production?—Yes, except that I took 12,220, which makes it a little less. It will come to a little more after taking away those 2,000. It comes to 10s. 5d. Then there are no discounts taken off that.

1581. If you want to get at what profit a publisher makes, you agree with me that you must add more debits than appear in those figures?—No, I do not—not in the sense in which this is used—"Cost of production."

1582. I am departing from that now. If you want to get at the profit a publisher makes, do you agree

with me that you must add some further debits than what appear in your paper?—No, I do not agree—not in connection with this book, and for this reason: Supposing Mr. Murray had only published that book, he would then debit the whole of his rent, but his rent would have had to be paid whether he had published this book or not.

1583. Do you observe if he is employing his premises, and his clerks, and his staff in publishing this book, those people's time cannot be expended in publishing another book at the same time. You know that?—That particular portion.

Mr. Justice DARLING: If you were considering it as Mr. Bell is considering it, and considering it for every book that he is publishing, it seems to me that he never would be allowed to charge his establishment charges at all, because you would always say: "You must pay them whether you publish this book or not."

Mr. MONTAGUE LUSH: According to you, the publisher is an extortioner even if he sells a book at a loss?

Mr. Justice DARLING: You are not bound to prove that.

Mr. MONTAGUE LUSH: If you are right, a publisher who publishes a book or two books in a year on the 10s. basis that you have given, and spends more than that in order to sell them, may lose in the long run, and yet, if "Artifex's" letter is true, may be an extortioner.

Mr. Justice DARLING: Mr. Bell must be allowed to think over that.

(Adjourned for a short time.)

1584. I told you I was going to deal with this question of cost of production and profit. I gather, in your letter of October 7th to Lord Esher, in which you speak of the cost of production, meaning, of course, as you say, the technical production—paper, printing, and binding. It does not mean that sum which, when you

have once spent it, will leave all the balance that the publisher gets as profit. Do you follow what I mean?—No, I do not quite.

1585. If you are wanting to ascertain what profit a man has made from a book, or from anything else he sells, if you want to deduct the cost, which you must do in order to get at the profit, you must, of course, deduct all that it would cost him to make that article?—To make that book.

1586. And you agree with me, in order to arrive at the profit, you must deduct not only the technical cost of production, but all those things, like cost of establishment, which he will have to pay before he can say that he has got the proceeds in his pocket as a gain?—Yes, in a sense, but not in the sense in which one was writing this letter, because, remember, that the proportion of those profits must depend entirely on the amount of business he does during the whole year.

1587. I am only trying to get at your view, as the term was used in your letter?—Yes. I meant exactly what I said, merely the cost of printing, paper, illustrations, and binding.

1588. Therefore the deduction from this statement of yours, assuming it is accurate, that all the balance over 9s. goes into the pocket of the publisher, would be wrong, even on your own view of your letter?—I think not. What I would say I deduce from that is, that against all his ordinary expenses he has a profit of 32s. He may be keeping a carriage for the necessity of his business, and he may be going into all sorts of expense.

1589. You are going to "Artifex's" letter. I am quite willing to take that with you, if you wish?—No, not at all; but the same thing comes out of the 10s. that it costs. I said it would cost him 10s. to produce that book. We know that the amount that he gets for the book is 42s. Then I say he had 32s. to put into his pocket. I am incorrect in putting it to Mr. Murray,

I admit, but there were 32s. to go against all other expenses.

1590. What I say about that is, and I think you agree with me, that assuming your figures are right, and assuming he kept it all and gave the authors nothing, it still would not be true to say that he is making a profit of 32s. if by "profit" you mean that net sum which is his gain on the whole transaction?—I think it would, because it means he makes 32s. more than he would have made if he had not had that book to publish. He has all those other expenses in any case.

1591. That is assuming that he would have had nothing else to publish?—I know he has other expenses.

1592. I want to see if you agree with me. If a man has to spend 10 per cent. or 20 per cent., or whatever it is, in his establishment to produce that article, it is absurd to speak of his profit until you have deducted that sum, is it not?—In a sense of course it is, but will you allow me to give an illustration? If I were asked what profit I make on the sale on a copy of "The Times," on the sale of a subscription to "The Times," I say I make 20s. on every new subscriber. I do make 20s., but I have to pay my rent, my printing charges, and all other things over and above that.

1593. If in fact it costs you 20s., or whatever your figure is, in order to pay your establishment charges to produce the article, you are selling really not at a profit but at a loss?—It costs me a great deal more, and I should then say I had been making a loss on every copy we sold, but that is not true.

1594. If the manufacturer of a book or anything else has to pay in establishment charges the whole sum which is represented by his gross profit, you would not say that for selling it at 6d. above that he is an extortioner, would you?—I do not quite follow you.

1595. May I put it in this way? "Extortioner" means—

Mr. ELDON BANKES: This is a question for the Jury.

Mr. MONTAGUE LUSH: I am entitled to ask Mr. Bell.

Mr. Justice DARLING: I think you may ask what Mr. Bell means by an extortioner if you are in doubt as to what it means.

1596. Mr. MONTAGUE LUSH: I know what it means? —May I explain it in another way. If Mr. Murray had sold 9,000 copies he made a certain profit. If he sold 9,001 he got 32s. more than he would have done if he sold 9,000. That is what I mean.

1597. Supposing, for the sake of argument, it cost him a portion of his 32s. to make it? —Yes; but it would not cost him more to sell more copies. Consequently, every copy means 32s. more.

1598. I am not on that point at all? —

Mr. ELDON BANKES: We are speaking of gross profit, and gross profit is very different from net profit. If you think we ought to have spoken of net profit we are wrong.

Mr. Justice DARLING: You know, Mr. Lush, what my view is. This case is being tried by twelve gentlemen, some of whom certainly are in business, and of the others some probably have some glimmering of what profits are.

Mr. MONTAGUE LUSH: I accept that explanation. I will not ask any more.

Re-examined by Mr. ELDON BANKES

1599. I have not many questions to ask you, Mr. Bell, but there are one or two things I must ask you about. You have been asked a good deal about the action you took after Mr. Murray's solicitor's letter. Is it your practice as manager of "The Times," when you receive a solicitor's letter, to pass it on to your solicitor for him to deal with it? —Absolutely, without even a letter.

1600. And after that date to act upon your solicitor's

advice?—Absolutely to leave him to act. I do not even act.

1601. Did you follow that usual course in this case?  
—Yes, I did.

1602. Now just a word or two about your letters to Mr. Murray. I see that on October 14th you wrote him a letter beginning "My dear Murray," and on the same day he wrote you a letter in answer beginning "My dear Moberly Bell." What terms have you been on with Mr. Murray?—I have always been on the terms that I hope I am upon now. I have a great personal regard for Mr. Murray. I have a personal friendship for him. We belong to the same club, the Athenæum.

1603. As between you and him you always have considered yourself, and still consider yourself, his friend?  
—Certainly.

1604. If instead of the solicitor's letter Mr. Murray had written to you and made a statement on his own personal responsibility as to his position, should you then have considered it your duty to act and not to take your solicitor's advice?—Certainly, I should have gone to see him at once.

1605. But as there was not anything of the kind, but the solicitor's letter, you took the ordinary course?—I wrote to him subsequently and said—

1606. Never mind about that. Now you were asked about the price at which "The Times" published the volume of the "Life of Queen Victoria"?—Yes.

1607. How many copies of that were printed?—1,000.

1608. Does it make a great difference in your experience—the number of copies that there are in an edition?—Of course. Subsequent copies cost about a third or fourth.

1609. Can you make any comparison between an edition of 1,000 and an edition of 10,000 copies?—None whatever.

1610. In this particular case was that book published

for you by a well-known firm of publishers?—It was.

1611. Did you pay them what they charged?—Yes, I did.

1612. At that time did you know as much as you do now about the cost of production?—I did not, but I have no complaint against them.

1613. Now just a word about the figures you gave as to the cost of production, using the word in the sense you use it, as shown by Mr. Murray's books. When you wrote to Lord Esher on 7th October you made it quite plain, did you not, what you were speaking about to him, because you said, "The cost of production of the book—I mean, of course, the technical production, that is, paper, printing, and binding—cannot exceed 9s. for the three volumes"?—Yes.

1614. Was that figure of 9s. the result of your personal experience?—It was.

1615. Had the matter been under discussion for some time between you and Mr. Hooper during the course of the book war?—Yes. Of course the cost of production we were continually discussing.

1616. Was there a common agreement between you and him that 3s. would cover the cost of a volume under ordinary circumstances?—That was the very highest it <sup>as</sup> could cost. Most books you can bring out for 2s.

1617. You have taken paper, printing, and binding for 9s.?—Yes.

1618. In the figures which you have taken from Mr. Murray's account have you included the whole of the illustrations?—I have.

1619. In your opinion, would that probably come under the heading of paper, printing, and binding?—No, of course not.

1620. So that even taking a different basis from the one you were talking about to Lord Esher, Mr. Murray's figures show that these books come out at a little over 10s.?—Yes.

1621. Now just a word about the plant. From your experience have these illustrations and the right of publication of this particular book got a value now?—Since I have been in court to-day I have been authorised to make Mr. Murray an offer of £3,333, not for the plant, but for the use of the plant to print 100,000 copies. If he will say I may have it now I will give him the contract at once.

1622. As far as you are concerned, does that coincide with your general experience as to the value of such plant as this?—Yes.

1623. Mr. MONTAGUE LUSH: This is an inconvenient time to make a business offer?—I do not require a reply at once. I will give Mr. Murray twenty-four hours.

Mr. Justice DARLING: What strikes me is, what a curious agent for this purchaser to have chosen at the moment!

Mr. HORACE E. HOOPER, sworn

Examined by Mr. ELDON BANKES

1624. I think you are the manager of "The Times" Book Club?—I am.

1625. You are responsible for the writing of these two letters of "Artifex"?—I am.

1626. What was the first you heard or saw of the review of this book that was published in "The Times"?—When I read the review in the paper.

1627. Prior to your seeing it in the paper had you any knowledge that any reference was going to be made in the review to the price of the book?—I had not.

1628. When you saw the review in the paper did you know who had written it, or did you know who was responsible for it?—I did not.

1629. Did you read the review?—I did.

1630. After reading it did you send for Mr. Ross, or communicate with him?—I did.

1631. I think the person who actually wrote the letter in the sense of writing down the words was Mr. Ross?—It was.

1632. But did you supply him with the material?—I supplied him with the facts as far as the price was concerned, the cost, and the publications at the end.

1633. Did he bring the letter to you when he had written it?—He did.

1634. Did you approve it as written?—I did.

1635. I think your name was put on it, or it was sent with a letter with your name to the editor?—It was sent with a covering letter. My name was not on it when it left my office.

1636. It was sent. You had it typed, I think?—I had it typed at my office.

1637. Had anybody connected with "The Times," or on the staff of "The Times," any communication with you, direct or indirect, about writing that letter before it was written?—None.

1638. Did you do it entirely on your own responsibility?—I did.

1639. Without reference to Mr. Bell or any one else?—Correct.

1640. Now with regard to the second letter. Was that also written by Mr. Ross?—It was.

1641. At your instigation?—At my suggestion.

1642. Did you approve it before it was sent for publication?—I did.

1643. Did you, in fact, communicate with Mr. Moberly Bell at all before the second letter was written. Do you remember that?—My impression is not, in regard to the letter, but on other things, yes.

1644. Your impression is you spoke to him about other things, but not in regard to the letter?—Not in regard to the second letter.

1645. Again, was that published entirely on your

own responsibility?—It was written entirely on my own responsibility.

1646. And sent for publication?—Sent to the editor for publication.

1647. Now just a word about the contents of the two letters. First of all with regard to the first letter. You supplied the material, as I understand, that is to say, as to the cost of production. Will you take a copy of the letter before you? In this letter it is stated that for an edition of 10,000 the three volumes as they actually appear would not cost more than 9s.?—Correct.

1648. In your opinion was that a fair estimate?—I had it figured out.

1649. At that time had you seen the volumes?—I had a volume in my hand.

1650. With regard to these other items, did they correctly represent your honest view?—They did.

Mr. Justice DARLING: Do you draw a distinction between one part of the letter and the other parts?

1651. Mr. ELDON BANKES: I am speaking of the items of the cost. At that time you were under the impression that the whole of the profits would be taken by Mr. Murray?—By the house of Murray—by the publishing house.

1652. You refer at the end of the letter to instances in which a second cheap edition had come out. We know the facts with regard to those, with the exception of Prince Hohenlohe. Is it a fact that a second edition of that was actually produced?—I believe not. I have learned since I came here that it was not.

1653. At the time you wrote this, upon what information did you act?—I telephoned to the man at the Book Club, who has been in the book business a great number of years, to get me a list of the publications, and he telephoned me down this list of publications.

1654. Did you find, in fact, that a second edition was announced?—It was.

1655. I think you have the document here showing it?—I have.

1656. That is the announcement of a second edition ?  
—Yes.

Cross-examined by Mr. MONTAGUE LUSH

1657. Did you tell my friend, Mr. Banks, just now that you believed still the facts stated in the letter of October 19th as to cost are correct ?—I did.

1658. I thought you wrote to "The Times" on October 28th to say you had made a mistake of 100 per cent. in your statement about the profit ?

1658A. Mr. ELDON BANKES : That is only a calculation ?—It is a mistake in figures.

Mr. ELDON BANKES : The percentage was wrong.

1659. Mr. MONTAGUE LUSH : When did you find out that mistake ?—I did not find it out. Mr. Ross found it out.

1660. How long before your second letter of "Artifex" appeared ?—I think it was two days—two or three days.

1661. What is Mr. Ross ? Is he a leader writer of "The Times" ?—He is a leader writer.

1662. What part, if any, did Mr. Ross take in the composition of your first letter of October 17th ?—He wrote it.

1663. Do you mean with his hand ?—With his hand.

1664. I am speaking of the composition rather than the mere writing. Did he take any part in the composition of it ?—He practically composed it all, on facts that I had given him.

1665. Who is responsible for what I may call the graceful expressions in the letter ?—I suppose I am finally, but, as a matter of fact, Mr. Ross wrote them all, and brought it to me with them in.

1666. Do you tell the Jury that the charge against Mr. Murray of being an extortioner was all Mr. Ross's idea or yours ?—Mr. Ross's.

1667. Did not you communicate to him that you thought Mr. Murray to be an extortioner ?—I did not.

It never was intended against Mr. Murray. It was intended against the publishing methods. Mr. Murray happened to be an instance in the affair. He happened to be the publisher of the book.

1668. You do not in the columns of "The Times" fling charges about people being extortioners, and then say that you did not mean it related to a particular person?—I have nothing to do with the columns of "The Times."

Mr Justice DARLING: To be accurate, the word "extortioner" is not here. The phrase is: "Now, sir, these figures in any case spell simple extortion. More than two-thirds of the price charged for the book represents an arbitrary addition to the natural price of the book, which would be absolutely impossible if books were published under the ordinary competition conditions applying to other productions."

1669. Mr. MONTAGUE LUSH: Now let me take another: "Were he"—that is Mr. Murray—"really imbued with the lofty and chivalrous sentiments which he has publicly professed, that aspect of the case would have presented itself to him very forcibly." Whose idea is that—yours or Mr. Ross's?—Mr. Ross's.

1670. Was that his own discovery, do you think?—As far as I am concerned it is.

1671. Is Mr. Ross here?—I do not know.

Mr. Justice DARLING: Was not he called yesterday?

Mr. MONTAGUE LUSH: No, my Lord. My friend, Mr. Bankes, said he was going to call him.

Mr. Justice DARLING: Who was it who was called?

Mr. ELDON BANKES: A gentleman who spoke to Mr. Ross's handwriting.

1672. Mr. MONTAGUE LUSH: I did hope that we should find out who was the author of these sentiments in "Artifex's" letter. Do you tell the Jury you are not responsible for the epithets that have been fastened upon Mr. Murray?—I forwarded the letter to the editor of "The Times."

1673. That much we have known for a long time.

Now will you please answer the question. Are you not responsible—I do not mean technically, but really responsible for these accusations against Mr. Murray?—I am not.

1674. Who is?—Mr. Ross.

1675. Do you seriously tell the Jury that it was Mr. Ross who wrote these words, without any suggestion from you?—Those particular words that you are referring to.

1676. I mean the substance of them. I am not on the mere clothing of them. I am on the substance of them?—The whole letter was written by Mr. Ross, with nothing from me but a suggestion as to the cost of the book, the profit that was made, and the list of publications at the end.

1677. Did you know that Mr. Ross was going to accuse Mr. Murray in the letter of doing what you thought was extortionate?—I did not know what Mr. Ross was going to put into the letter.

1678. You really did not know?—I did not.

1679. You were so innocent that you did not know if Mr. Ross was going to praise him or blame him?—It was hardly a question of innocence. It was a question of giving him some facts to write the letter on.

1680. Was that all?—That was all.

1681. Why did not you let him put his name to the letter? Why did you put your word "Artifex" to the letter?—He put the word "Artifex."

1682. Then why is your name on the back of the manuscript?—I forwarded it to the editor of "The Times."

1683. Is Mr. Ross the person whom we ought to blame for this letter?—I cannot say. I have told you the facts.

1684. Before you sent this to "The Times" I suppose you carefully read it?—I read it.

1685. Did you agree with the statements in it?—I agreed with the statements in it.

1686. All of them?—All of them.

1687. Do you agree, and did you agree, with the statements that if Mr. Murray were really imbued with the lofty and chivalrous sentiments he professed he would have thought differently?—I should agree with that.

1688. Mr. Justice DARLING: If you agree with that, where did Mr. Murray profess these lofty and chivalrous sentiments?—I think he did it in an article which was published in one of the Reviews. He wrote an article published in one of the Reviews which was called “A Publisher in Peace Time.”

1689. Mr. ELDON BANKES: It was in the “Contemporary,” my Lord.—My impression is that that is what Mr. Ross is referring to.

Mr. MONTAGUE LUSH: That is in December 1906, and it is the first of the articles in the number.

Mr. Justice DARLING: Is there a distinction drawn between the period before the book war and the period afterwards? Is that it?

Mr. ELDON BANKES: This was written at the time of the book war.

Mr. Justice DARLING: Yes; it begins by saying that the book war is raging at the present time. I suppose this is some Arcadian period which preceded the book war.

1690. Mr. MONTAGUE LUSH: Is there anything in that article which you had in mind when you said that this was true—that he had expressed lofty and chivalrous sentiments?—Mr. Ross wrote them, and therefore I could not have had that in view at that time.

1691. Now take the last clause of that paragraph: “He has exploited the great personality of Queen Victoria for his own ends, and coined the national interest in her doings for his own enrichment into 32 pieces of silver, to be precise.” Whose composition is that?—Mr. Ross’s.

1692. Exclusively?—Exclusively.

1693. Did you suggest to him that he should say something like that?—I did not.

1694. What did you ask him to write?—A letter on the subject of the very high price of the book.

1695. What did you write to him to write it for? What object had you in mind?—Simply to call attention to the very high price of the book.

1696. Mr. Justice DARLING: Did you not indicate whether he was to prophesy in favour of Mr. Murray or against him?—I did not.

1697. Mr. MONTAGUE LUSH: What did you think he would do?—He only could do one thing—prophesy against him.

1698. Is that what you wanted him to do?—It is naturally what I expected him to do.

1699. And what you wanted him to do?—Yes, what I wanted him to do.

1700. I hope you were content with what he did?—Absolutely.

1701. It is as much as you wished?—Absolutely.

1702. I do not wonder. You could not have had much more. Do you now tell us that in your present knowledge it is just in your opinion to compare Mr. Murray with Judas?—I should not have said that he had compared them.

1703. Whom did you think he did compare him with when he talks of 32 pieces of silver?—I think the correct thing is 30 pieces of silver, is it not?

1704. You do not think that was intended?—I think it was a play on words rather.

1705. What was the play? I do not see it?—Simply bringing in the 32s. If he had said 32s. it would not have meant anything.

1706. Do you think that he put in the words “pieces of silver” in order that people should think of Judas?—I cannot say what he thought.

1707. What do you now think was meant by that?—I really think he thought it was a bright way of putting it.

1708. You mean it was an artistic and highly humorous letter?—I think that is what he thought.

1709. Is that what you thought?—I think so too.

1710. Mr. Justice DARLING: Do I understand you to mean that is all you think about it—that in your opinion it is quite proper?—My opinion was that it was not intended to speak of Mr. Murray as Judas Iscariot. It did not flash across me in that way when I read it.

1711. Do they in any country that you know of speak of shillings as pieces of silver?—I should say they would here. A shilling is a piece of silver.

1712. Do you mean here in England?—A shilling is a piece of silver.

1713. If anybody means to give anybody else a shilling he says: “Here is a piece of silver for you”?—Not necessarily.

1714. If I ask anybody, “How much is this?” he says, “A piece of silver.” How should I know if I asked a person, “What is the price of this?” and he says, “A piece of silver,” whether he meant 6d. or five shillings?

1715. Mr. MONTAGUE LUSH: Also family plate. One does not know what it means. Now may I pass to something else? Is there anything in that letter that you now regret?—I think if I had to write it over again I should put it a little stronger away from Mr. John Murray—that is to say, to cover the house rather than him individually.

1716. That is the only thing?—I think so.

1717. You would say the same thing about all the publishers, but you would not want to pick out Mr. Murray?—

Mr. Justice DARLING: He said the house of Murray instead of Mr. John Murray.

1718. Mr. MONTAGUE LUSH: You want to bring some more gentlemen into the description?—Not at all.

1719. I mean the members of the firm. Did you wish them well with their book?—I had no ill-feeling against them.

1720. Is this the way you write about people who are your friends?—I did not write it.

1721. But you sent it for publication?—Yes.

1722. Is that what you are in the habit of doing towards your friends?—Mr. Murray was no friend of mine.

Mr. ELDON BANKES: He means that he did not know him one way or the other.

Mr. Justice DARLING: I think he means to indicate that he does not belong to the same club—the Athenæum.

1723. Mr. MONTAGUE LUSH: Now let us take this statement: “That luckless victim.” That describes the public who were going to buy the book if it was a success. Did you think that would assist the sale of the book to let the public know that they would be victims if they were foolish enough to buy it? Did you think that would help the sale of the book?—No.

1724. Did you think it would hurt it?—If they believed it.

1725. You did not intend that they should not believe it, or else you would not have published it?—If a man believes that, he is a luckless victim, but a man might not believe that he is a luckless victim.

1726. You wished the public to believe that the letter was a true and accurate statement?—It is just a matter of wording, you know. The use of the words “luckless victim” might have been used in regard to the publisher.

1727. Did you think that was calculated to injure the sale of the book, or was that a bright and humorous touch?—I should think it was.

1728. Now take the next thing about the plunder. “He”—that is the bookseller—“gets 5s. more of the plunder, and Mr. Murray 5s. less.” Why did not you say “Five pieces of silver,” if that is your usual way of talking of shillings?—I did not write the letter.

1729. Perhaps you would have done it, if you had?—I do not think I am bright enough to do it.

1730. I accept that as you have said it. Now, may I ask you to turn to the second letter? Is that Mr. Ross’s production too, or are you more responsible for that?—Mr. Ross wrote it.

1731. I know he did. That is not what I asked you.

Are you more responsible for the composition of the second letter than you were for the first?—Just the same.

1732. How came Mr. Ross to write it? Did you ask him to?—Yes.

1733. What did you say to him?—I said I thought he might point out that it was not intended to say anything against Mr. Murray personally.

1734. Is that all you told him?—Will you let me read it through a minute, so as to be sure that there was nothing else of mine in it?

1735. Yes, you had better read it?—And that it was brought out against the system rather than against any particular member of the publishing concern.

1736. You told him to say that?—That was the suggestion I made to him.

1737. Are there any more of your suggestions?—I should think that of where it speaks of what is a fraction was also mine, and I think also the next paragraph, where it says that it indicated that it was not Mr. Murray.

1738. You mean the passage that refers to Mr. Snooks?—The one above it.

1739. That is your bright touch?—I did not mention Mr. Snooks.

1740. Have you told us all that you suggested to Mr. Ross?—I think so.

1741. Had you seen the so-called apology in “The Times” before this was written?—Yes, I had.

1742. Had you observed that Mr. Murray’s solicitors had written to contradict certain statements?—Yes.

1743. Did you know that the writing of a solicitor’s letter indicated that Mr. Murray took a grave view of “Artifex’s” letter of the 19th?—It was a natural supposition.

1744. Of course it was. Did you see Mr. Moberly Bell about it?—I think I did.

1745. When was it that you saw Mr. Moberly Bell?—In all probability the day, or the day after, he received the letter.

1746. Did he show you the solicitor's letter?—I am not sure. It was in "The Times" solicitor's hands.

1747. Did he tell you the substance of it?—I think he did.

1748. Did he tell you that the solicitors to Mr. Murray stated that the statements as to costs—I will give you the exact expression—are absolutely false? If you wish it I will read what precedes it. You will remember, no doubt, that Mr. Murray's solicitors wrote and said the statements in "Artifex's" letter were absolutely false. Is that so?—I think so.

1749. Did you not suppose that when "The Times" published that sort of half apology they intended to some extent to qualify "Artifex's" first letter?—I should think they were trying to be fair to Mr. Murray.

1750. That comes to the same thing. May I ask why you allowed Mr. Ross to publish the second letter, which does not accept the contradiction by Mr. Murray's solicitors at all, if he was a friend and you wished him well?—I beg your pardon. I did not say he was a friend.

1751. I will withdraw that. If you did not wish him ill, why did you wish Mr. Ross to publish the second letter to point out the fact that a fraction was anything less than the whole? It might be 5 per cent., 10 per cent., or anything?—You did not want to write to point out what?

1752. That a fraction was less than the whole. Tell me what was the real object you had in view in causing that second letter to be written. To aim a blow at Mr. Murray, was it not?—I do not think so.

1753. What was it?—The high price of books.

1754. Now about the question of cost; and that is the last thing I am going to trouble you with. I gather from Mr. Bankes's question to you just before that you and Mr. Moberly Bell had discussed the cost of production of the books directly before this "Artifex" letter appeared?—Generally.

1755. Had you discussed with him at all the probable

cost of producing the Queen's Letters?—We had not.

1756. At any time?—I do not think so, I do not remember it.

1757. Is that all you can say?—Naturally I had not seen the book, and it would be impossible to figure that out until you had seen it.

1758. I am very much obliged to you for that admission. It would be impossible to figure the cost of the book until you had seen it?—Accurately.

1759. You want to be accurate, I hope?—I try to be.

1760. When did you first see the book?—I could not state the date, but it was on the day of publication.

1761. That would be the 16th. When was it you calculated that the cost of it would come to 9s.?—The day before "Artifex's" letter was published, the 18th.

1762. You had seen the book by then?—I had.

1763. Are you aware that Mr. Moberly Bell had given the same figure in a letter that I have read more than once of October 7th?—I was not aware of that.

1763A. Is that a mere coincidence?—Absolutely, as far as I am concerned.

1764. On what was your figure of 9s. based? Who assisted you, if anybody, to calculate it?—My manufacturing man.

1765. He is not here?—I believe he is.

Mr. ELDON BANKES: I can call him if you want him.

Mr. MONTAGUE LUSH: I daresay I can get all I want from Mr. Hooper.

1766. Was the figure entirely about cost intended to convey to the public that everything over it was clear net profit in Mr. Murray's hands?—I should not think so.

1767. Was it not?—No.

1768. What was your letter intended to convey?—There was gross profit above what it cost to manufacture.

1769. You mean that?—I do.

1770. The readers of this letter of "Artifex" were intended, were they, to bear in mind that there would be other deductions to be made by Mr. Murray before it was a real profit?—If it was living.

1771. Would you mind answering that?—It must have, of course.

1772. If the letter was intended to convey to the readers that the whole of the balance over 9s. went into Mr. Murray's pocket you knew that would be untrue, did you not?—I beg your pardon, will you repeat the question again?

Mr. ELDON BANKES: It goes into the pocket.

1773. Mr. MONTAGUE LUSH: And goes out of the pocket. I am talking of money getting into your pocket in the sense that it stops there, and you can spend it as you like. If the letter is calculated to convey to its readers that Mr. Murray put into his pocket as real profit all over 9s., you knew that to be untrue?—I do not think so.

1774. Do you mind answering that?—I would like to explain.

1775. I would rather you answered?—It has got 32s. as gross profit.

1776. Mr. Justice DARLING: 32s. is what he gets for his own enrichment—32 pieces of silver. Your gross profit does not enrich you. Is it not perfectly possible to show, according to this system, gross profit, and for there to be no net profit at all?—It would be quite possible under certain circumstances. Of course if it is a very exaggerated circumstance.

1777. If there is no net profit you are not enriched?—You have to pay for your living.

1778. It is not your living. Suppose you leave out establishment charges in many businesses which make no profit at all, you can show a gross profit, can you not?—Certainly.

1779. If you deduct the establishment charges you result in no profit at all?—Will your Lordship allow me to point out this?

1780. Just answer me, is that so?—Just so.

1781. If you carry on a business and make no profit at all, how are you enriched?—If you do not make any profit you cannot be enriched.

Re-examined by Mr. ELDON BANKES

1782. Your case is, rightly or wrongly, that anybody reading this would understand the writer was speaking of a gross profit?—I should so understand it.

1783. You do not profess that these figures are accurate if the writer understands it as net profit?—Exactly.

1784. You have been asked some questions about Mr. Murray. Do you know Mr. Murray personally at all?—I have met him once or twice.

1785. Just met him?—That is all.

1786. Have you any ill-feeling of any sort or kind against Mr. Murray personally?—I have not.

1787. You have been asked about one of Mr. Ross's expressions in this letter about Mr. Murray being really imbued with lofty and chivalrous sentiments, and you refer to this article in the "Contemporary Review." Just let me turn to page 799. I think you will find there Mr. Murray says: "We publishers have all of us made endeavours from time to time to earn the credit of giving to the world books of lasting worth, with only a secondary eye to profit, which often never comes." Is that what is in your mind?—That was in Mr. Ross's mind, I believe.

1788. You knew of it?—

1789. Mr. Justice DARLING: You came to the conclusion that this book had cost only what you have told us?—I did.

1790. What experience had you of producing books?—I have been in the book business all my life, all my business career almost.

1791. What sort of book business?—Retail and publishing.

1792. Where were you in business as a publisher ?—In England and in America both.

1793. When ?—Ever since I was a boy of 18 or 19.

1794. Where was that ? In America first ?—In America first, and here afterwards for 11 or 12 years.

1795. Where were you in business—in business in London ?—Yes.

1796. In your own name ?—Hooper & Jackson.

1797. When did you go into business as Hooper & Jackson ?—A matter of 10 years ago.

1798. How long were you in business in that way ?—For the last 10 years, since I have been here.

1799. Do you mean you are still in business as a publisher ?—Yes.

1800. In addition to that, you are manager of "The Times" Book Club ?—Yes.

1801. All your occupation is not as manager of "The Times" Book Club. You are a publisher as well ?—I am.

1802. Do you belong to the Publishers' Association ?—I do not.

Mr. ELDON BANKES : That is my case.

Mr. Justice DARLING : What about Mr. Ross ?

Mr. ELDON BANKES : I have not got him here, because I understood Mr. Hooper took the full responsibility.

May it please your Lordship, Gentlemen of the Jury. You have now heard the case on both sides, and it only remains for me to address to you briefly a few observations. I have been most anxious that you should hear everything that my learned friend desired to put to my witnesses, and therefore I have refrained from objecting to a great many questions which I thought I might otherwise have objected to, but I ask you kindly to bear this in mind. It is for you to say whether this letter of "Artifex" is a libel or not, and it is for you to form your own opinion as to the meaning of the language ; and it does not really help you at all to know

what, by the light of subsequent events, Mr. Moberly Bell thinks of it, or what Mr. Hooper thinks of it, or what anybody else thinks of it. I have read you that passage from Lord Esher's Judgment in order that you might have your minds directed at once to what fair comment is. It is a question whether the particular writer might in your judgment fairly at the time have come to the conclusion that he did come to and express. Whether you agree with it, or disagree with his view, is wholly immaterial. Whether anybody else, any other witness in the case, agrees or disagrees with it is wholly immaterial ; and I ask you to apply that standard to this language, and ask yourselves, when you come to decide it, whether this language does exceed the limit of fair criticism. Now there is one other observation I want to make, because I think again I might have interfered with my learned friend, but I did not. He kept on asking my witnesses, was this letter written with the object of assisting or hurting Mr. Murray ? Now just consider for a moment what is the value of such a question in assisting a Jury, because, mind you, comment and fair comment is often purposely directed to injure or hurt the system which the writer is commenting upon. Supposing any one of you found existing at your own homes some grievous public abuse, and you felt it your duty to write to the newspaper commenting on that, you would know that if you fairly commented you would be protected from an action of libel, but you would also know that when you wrote that letter you intended to attack the system because you did not agree with it, and you thought it ought to be attacked. Therefore what is the use of my learned friend occupying your time and the Court's time in asking that sort of question, when, if he had reflected, he must have known that the question is, Is this or is it not fair comment ? If it is fair comment the man is entitled to comment upon a system in order to condemn it ; and therefore to ask him whether he intended to condemn it or whether he intended not to condemn it is

a useless question ; and with that observation I hope when I come to that part of the case you will, as I am sure you will, direct your minds to what is the real question, and not mind this flood of prejudice which has been introduced into this matter. I wonder at it, because it is generally introduced because the person who introduces it is afraid of tackling the real question. It is for you to say what the object in this case is, but the question for you is whether or not it does or does not exceed fair comment. I want to say a word about the evidence given by my witnesses, because here again this has really nothing to do with the case ; but it has been introduced in the way other things are introduced, in order to prejudice your minds against "The Times." You know the suggestion was that the persons who are responsible for the management, and the persons who are responsible for the letter, put their heads together and concocted this elaborate system of attack ; namely, that, first of all, somebody should write a review in which some comment should be introduced which was not libellous, and then somebody should take the opportunity of that having been done to make this attack. I ask you respectfully, Gentlemen, to say that the evidence which has been given displaces that suggestion entirely. With regard to the review, you know who the reviewer was : you know that he is a man who is admitted on all hands to be the proper person to select. You know his view to be, as he has told you, that he thought the price too high, and by "too high" he means that somebody was getting more profit out of it than he ought to do, and you know that he did deliberately comment on the price. The person whom you saw in the box, Mr. Bruce Richmond, entrusted to him the task, if he thought fit, of introducing something into that review in that connection. You have seen Mr. Bruce Richmond. What did you think about him ? Did you think him a fair witness, and a witness of truth ? If you do, you will be satisfied that the only communication on this matter that he had with Mr. Bell was long

before Mr. Bell wrote to Mr. Murray, and you will be satisfied that it was left entirely to Mr. Bruce Richmond's discretion as to whether Mr. Moberly Bell's suggestion should be accepted or not, and that Mr. Bruce Richmond himself determined that he would not accept any such suggestion, unless with the full approval of the person whom he had selected to write the review. That is the whole history of how this review came into existence ; and I ask you again to bear in mind there is nothing in that review that is libellous. There is nothing in the review of which Mr. Murray, or anybody else, can complain, because all it says is, if you remember, that the three volumes might, one would imagine, have been produced at 10s., and so, at a reasonable figure, would be sold to hundreds of thousands rather than to a privileged few. There is no reference at all to Mr. Murray, but a mere statement by the writer of this review, or the editor of this review, that in his opinion the volumes could have been produced at 10s. Gentlemen, he is absolutely entitled to say it ; and I pass from that again with the warning (which I hope you will accept) that you must not allow, in this case, your opinion either as to the libel, or any damages which you may award to Mr. Murray, if you think "*The Times*" are wrong, to be influenced at all by that review. It has been dragged into this case simply and solely for the purpose of asking you to believe that the persons responsible for the management of this branch of "*The Times*" work have concocted this deliberate attack on Mr. Murray. That has failed ; and, having failed, you are not entitled, with great submission, to attach any further importance to the review.

Now, Gentlemen, we come to the letter itself ; and so much has been said about this letter that I confess that I offer any observations to you with great diffidence ; but I do say what I have said so often, and desire to repeat, that this writer was speaking of gross profit. You all understand the difference between gross profit and net profit, and everybody knows it. You know

when a man is speaking of gross profit you must not treat him as a man who is speaking of net profit. Now I ask you to read this letter through, and I ask you to say, if you read it through, that it is impossible to read it in any other sense except that this writer is speaking of gross profit, and when he speaks of 32s. of profit in his private pocket it means it will have to be taken out to the extent of making it net profit. If it is speaking of gross profit it is idle to confuse that with the question of net profit. I am not going into that in greater detail. I am sure you will consider the letter as a whole. You cannot pick out a passage and say it is plain that he is speaking of net profit. Reading it as a whole, you will find that he is speaking of the cost of production, and Mr. Murray agrees in this connection that the cost of production means expenditure, and that must necessarily exclude the establishment expenses ; and if he is speaking of the cost of production in that sense it is plain that he is speaking of gross profit. I want you kindly to bear with me while I deal with another point with regard to this matter. You know the whole of this letter is not libellous : it is only a few passages in it which refer to Mr. Murray, in language which, if it exceeds fair comment, would be libellous. You remember what the words are. It does not call Mr. Murray an extortioner in terms. What it says is that Mr. Murray gets 45s. for what cost him 10s. He does get 45s., I submit to you, for what cost him 13s., meaning thereby the cost of production. That is 32s., or over 350 per cent. He goes on : "Now, sir, these figures in any case spell simple extortion," and then there is the reference to 32 pieces of silver. Those are the two passages, and the only two passages, which are libellous, and you have to consider whether those exceed the limits of fair criticism. Now, you have long ago realised that the statement is inaccurate to this extent. The writer of this article was under the belief that Mr. Murray took the whole of this profit, and he wrote the article on the footing that he took the whole. It is wrong to this extent : instead of saying

there was one extortioner he ought to have said there were three extortioners. But does that affect Mr. Murray's position in the least? The point of view of this writer was as between the public and the person or persons who took the profit. It is quite true he assumed Mr. Murray took all, and he wrote as though Mr. Murray took all; but taking the letter as a whole, I ask you to regard it as the contention of a man who is discussing in public a question of great public importance; namely, the difference between the price the public have to pay for a book and the cost at which it is produced. There again I leave the letter, because it is all before you. You will remember the two questions: Have we substantially stated the facts with regard to the cost? I submit we have. Have we unfairly commented upon the result as so produced? I submit that we have not, and that the inaccuracy in treating Mr. Murray as the person who took the whole instead of a portion, is really not material when you are considering the object and intention of the writer, and the substance of the complaint which he was making in the public interest.

Now, Gentlemen, so much for that part of the case; but there are one or two other matters now that I want to deal with which have reference more to the question which arises, assuming you take the view against "The Times," that they have done more than they were entitled to in writing this letter. Of course I must deal with that view as well as the other view, because I do not know what the ultimate result of your opinion may be. Now, Mr. Murray is claiming damages here, and, of course, the damages are divided into the damages which he claims because of what he calls the personal attack upon himself, that is, damage to his reputation; but he claims also damage to his business, because he says that the sale of this book has been influenced by the publication of the libel. Now I will deal with those two branches in a very few words. You cannot deal with this letter as an isolated transaction. In awarding

damages to Mr. Murray here, you cannot close your eyes to the fact that this is only an incident in a war, and a war in which Mr. Murray himself was one of the combatants, a war in which Mr. Murray took every possible step he could, and I am not complaining of it, and I have no complaint to make of Mr. Murray's conduct, and have no desire to make any accusation against him about it; but if a man is a combatant he cannot all of a sudden say to his opponent : "I have never been a combatant." He may say, if he chooses, to give him fair warning : "I am not going to continue this combat, and then if you choose to continue it you continue it at your peril," but if a man who does take part in it, and who continues to take part in it, and who gives his adversaries no warning that he is withdrawing, then, because he receives a blow which he does not like, he cannot say now : "I am no longer a combatant, I am going to a Jury for damages." Let Mr. Murray withdraw from the combat. You recollect yesterday the way in which he is treating "The Times," and, Gentlemen, I should not complain of his coming to a Jury, but you know he has not minced matters, he has not measured his language. You will remember the kind of view which he expressed here before you about "The Times." Do you remember what he said when we asked him why he did not write when the opportunity was given him of writing a letter to "The Times" in answer to the letter of "Artifex," his answer was : "You must remember that I was in the hands of people who would have twisted what I said to their advantage." So, Gentlemen, Mr. Murray continues the language which he feels inclined to use against "The Times" down to the very moment of his stepping from the witness-box into the well of the court. Now I venture to think, without making any attack on Mr. Murray—and I desire to make none—I am entitled to ask you to bear in mind that he has throughout been a combatant, and an active combatant, and that he must not expect to be treated in this dispute other than as a man who

up to this action has been taking part in this warfare which consisted largely of strong language.

So much upon the personal aspect of the question. Now about the damages which he says he has suffered to the book. Mr. Murray cannot have his cake and eat it too. If our figures are right about the book, then, I submit, there is no libel, but if Mr. Murray's figures are right, he cannot have more profit than he swears to you he is making, and you know he says that the profit he is making is 2s. 3d. a copy, or 2s. 3d. a set; therefore, if you think that the sale of this book has been interfered with at all you cannot award him damages on a higher basis than 2s. 3d. a set, because that is his own figure. I have been trying to satisfy you that it is wrong, but he may have satisfied you that it is right. He cannot defeat my claim of fair comment on the ground that my figures are wrong, and then, having done that, accept my figures for the purpose of his damages. As I said before, he cannot have his cake and eat it. Has this libel—please confine yourself to that—appreciably injured the sale of this book? You must exclude from your consideration any effect that the review had, and then you must ask yourself: "Have I any reliable evidence that the letter of 'Artifex' affected the sale of this book?" Now what evidence have you got? It is rather remarkable, Gentlemen, is it not, that there is not a single representative of any one of the firms who bought the large number of copies who is called. One would have thought that if anybody could tell you better than another whether or not the sale was really affected by anything that appeared in "The Times," it would be the representative of one of the firms who bought the large number of copies, W. H. Smith & Sons, Simpkin & Marshall, and the five firms whose names I gave you, whom for the moment I have forgotten. No one of those is before you, but you have two travellers of Mr. Murray, and their evidence I will deal with in a moment, and you have a number of gentlemen whom I hope I am not unfairly describing as partisans—

certainly some of them were. What does their evidence come to? Now let me deal with the travellers first. One of the travellers clearly relies on the adage that "There is many a slip between the cup and the lip," because he tells you that long before the book was published, long before there was any reference to it in "The Times" at all, he was dissatisfied with the way in which the book sold. Why was that? That must be due to some natural cause which was not "The Times." I suggest to you the natural cause would be the high price, but, at any rate, we need not discuss what the cause was. There was a cause of some kind which resulted in this particular traveller being dissatisfied with the way in which he was able to sell the book before the publication in "The Times." Now, how did he fare after the publication? He said generally the sales fell. I suggest to you, Gentlemen, as men of business, that when you have gone round to all your best customers, and you have got them to subscribe in advance, you have pretty well worked the best ground, and, having worked your best ground, you cannot expect to get the same results off the barren ground. But we have got the figures, and the figures do not support what the gentleman said. The figures show, it is true, that on some days he made no sales, but, on the other hand, the figures show that the sales were going up just as much towards the end as immediately after the publication of "The Times," and that there is no relation between the number he sold on particular days and the date of the publication of this libel. That is the first traveller. The second traveller was the country traveller, and he told me he would let me have the figures of the number of copies which he sold. You remember he got subscriptions for 97, I think, and he told me he would let me know, because he had not got the number of copies he sold afterwards. Somebody has kindly sent me—I suppose it comes from Mr. Murray's office—a written statement: "Total Queen's Letters placed in the country from October 21st to December

31st, 1907, by D. J. Rice, 272 copies, of which 89 were on sale or return." So that if he placed 97 before the publication, and 272 less 89 after, at least he did as well after the libel as before, and that gentleman's evidence was really very material from my point of view, because you will remember that in answer to my learned friend he expressly said that the booksellers who spoke to him complained of the review and said it was the review that had done the damage, and it was only on second thoughts, when he realised possibly what he had said, that it flashed into his mind that he had also mentioned "Artifex's" letter. That, again, is a matter for you. Now for the booksellers. There was Mr. Young, of Liverpool, who was brought up on "The Times," or at any rate was a gentleman who was very anxious to let you know he was on his oath, which nobody doubted, and who spoke of coming armed for the questions I was going to ask him, and it turned out that he was an active member of the Booksellers' Association. You know, after all is said and done, his evidence came to this, that somehow or other "The Times" were to pay damages because on the envelope of his Christmas catalogue he has put a picture of the Queen, and when the whole thing was investigated it turned out he had sold more copies after the libel than he had sold before, although he would not accept my calculation for the moment. I think it was 135 and 62 afterwards.

Mr. F. E. SMITH : You are speaking of Mr. Young.

Mr. ELDON BANKES : Something of that kind. Whatever the figures were, I am not going into it in detail. Then there is Mr. Avery, Mr. Barwick, Mr. McLaughlin, and Mr. Daniel Williams. Mr. Daniel Williams was an important witness, because you know he was recalled in order that he might make it plain as to whether he had understood me or not as to whether it was the statement about Mr. Murray in the libel or the statement that the price of the book was very high that had done the damage, and he was very emphatic, as obviously he must be, that what he thought had injured

the book was the statement that the price was very high. That is a statement we were absolutely entitled to make. If we had confined ourselves to saying the price of this book is too high, it ought to be produced at less, that we believed, in fact, the cost of it was 9s. or 13s., and we had said nothing more, there would be no libel, but according to all these witnesses we should have done the same harm, and therefore you cannot in this case, I submit, in fairness to "The Times," attribute this loss of sales, if you think there is any loss of sales, to the libel or to the accusation on Mr. Murray. That never had anything to do with it. If the sale was affected it was affected by a statement which we were entitled to make, that we thought the book was published too high, and we entertained exactly the same views as that gentleman who has been called, who was the reviewer. That is all I have to say about the matter. I respectfully ask you in the first place to say that "The Times" did not exceed the limits of fair criticism, that if they did your verdict ought to be for very moderate damages, upon the ground that one antagonist cannot ask another antagonist to pay heavy damages because he chooses to retire from the battle at a particular point, and on the further ground that he has had his full opportunity against us. You remember he has taken every step against us that he legitimately could. Further, upon the ground that with regard to this suggested loss of sale it is largely exaggerated. People are building upon expectation which differs materially from experience, and that the truth is that if any effect has been had upon the sale of this book it is due, not to the attack upon Mr. Murray, but to the expression of legitimate opinion with regard to the cost of the production of this book.

Mr. F. E. SMITH: May it please your Lordship, Gentlemen of the Jury. I propose in the observations which my learned friend, Mr. Montague Lush, has asked me to make to you to invert somewhat the observations

of my learned friend, and to invite your attention by way of comment, and for reasons which you will probably understand, to that part of his speech which he left to the last, and that is to the question of damages which ought to be paid by the proprietors and manager of "The Times" to Mr. Murray if you arrive at the conclusion that in fact they have libelled him.

Now, Gentlemen, upon that point I would venture very briefly to remind you how the evidence stands. Mr. Murray has told us that by October 17th 5,821 copies were sent out. 10,200 were published, as you know, in the original lot. By the end of October 7,000 copies were laid down; by the end of November 8,200 out of the 12,200; by the end of December 9,000, and by the end of January 9,200, so that at the present time Mr. Murray has on his hands 2,790 volumes. It becomes necessary to remind you a little more closely than my friend has done of the evidence, and the uncontradicted evidence, which has been given before you by the travellers and booksellers who have been called as to the cause why of a book which "The Times" and others anticipated would have exceptional popularity so large a number has been left on the hands of the publisher. Let me remind you now how the evidence stands on that point. Mr. Young gave his evidence, and he is a witness who will be within your recollection, and no question was asked of Mr. Young, although my friend has been pleased to make some humorous observations about the way he gave his evidence. No question has been asked in any way of Mr. Young which will impugn his credibility as a witness. He has great experience as a book tradesman. Why is he not to have his statement of fact implicitly accepted? What does Mr. Young say? He was asked this question: "Have you sold any since Christmas?"—Since Christmas I have sold two copies. Q. Only two copies?—Only two copies. Q. What do you attribute that small number to?—I sold 38 copies until the time that this review appeared, and even with

a very busy season, when I should have had double the number of copies I had sold up to that moment, I only sold 28 copies during the whole of the Christmas season, and after Christmas only two copies up to date.

Q. What do you say yourself now that six months has gone, so that booksellers may compete as much as they like ? Is it as easy now to sell the volumes as it was before ?—No, I have already been told ”—and then he was going to say something about “ The Times.” The next statement was made by Mr. Hollands, and I will read you what Mr. Hollands said, which was material on this point. He was asked : “ When they subscribed to the Queen’s Letters before publication, before the first letter of ‘ Artifex,’ was any complaint as to the price of the book made to you ?—None whatever. Q. In the course of disposing of this number you have mentioned—4,000—had you any complaint at all about the price ?—No. Q. After the letter of ‘ Artifex ’ appeared what was your experience then—after the publication of the letter in ‘ The Times ’ ?—The first letter of ‘ Artifex ’ ? Q. Yes ?—The sale began to drop at once. Q. Were any complaints made to you ?—Yes, complaints were made to me generally by the trade that after the letter of ‘ Artifex ’ they could not risk stocking the book. Q. What was the result of your efforts to subscribe the book among the trade ?—After subscription of course particular efforts to get repeat orders were made. The only mode we could take to get a man to have copies, or to keep the book in stock, was, as we say in the trade, to see him right.” So that you have also, on the evidence of this witness, this fact. You have it from another witness that he had no difficulty in placing the book until the day the first letter of “ Artifex ” appeared, and at the moment that letter appeared the difficulties multiplied, and it was impossible for him to get rid of copies on the ordinary terms.

Now, Gentlemen, the next witness who spoke to that was Mr. Rice ; and I think it is fair, because of

some minimising observations which have been made by my learned friend as to the effect of this letter of "Artifex" to tell you what Mr. Rice said. He is asked what his experience was after reading the review, and then he describes certain visits he paid to Mr. Simms, who is a large bookseller at Bath, and this is what he said : " Did Mr. Simms tell you why he did not care to give further orders ?—He did. Q. What did he say ?—He said that he was afraid ' The Times ' review would have a very adverse effect upon his customers, most of whom had read it, and he did not feel disposed to take the risk of adding to his stock of this book." The same witness, Mr. Rice, tells you he went to a number of firms—I will not take you through them all again—and what do you find ? That in most of those cases after the first letter of "Artifex" appeared he was met every way by refusal to take the book, and when an explanation was asked it was invariably the same explanation : the effect on the purchasing public that had been created by this letter of "Artifex." Now, Gentlemen, I will only give you one other reference, and that is to the evidence given by Mr. Avery. Mr. Avery, you remember, was a bookseller of very large experience. He was himself a literary gentleman, who was called last but one of the witnesses who gave evidence. I asked him : " Did you read the letter of ' Artifex ' in ' The Times ' ?—I did. Q. Until that letter appeared on October 19th had you had, as far as your memory goes, one single complaint about the dearness of the book ?—I do not remember one single complaint. Q. Will you tell my Lord and the Jury what your experience was after the appearance of the first letter of ' Artifex ' on October 19th ?—Absolutely fatal. The copies that came in on the Monday morning, which was the 21st, lasted us until November 9th. Q. That was only 13 ?—Only 13. I never remember such a thing before." So you have it from those gentlemen at a time which ought to have been the very best for the sale of the book, the gentlemen who had been order-

ing 13 and 26 every day and getting rid of them as fast as customers came in, that the moment this letter of "Artifex" appeared the sale immediately ceased, and he kept the 13 which he had for very nearly three weeks. I need not, I think, say more upon the point. I wish to lay before you, first, that whatever other point of this case may be in controversy, after the evidence you have heard there can be no controversy as to the swift and sinister way in which the letter of "Artifex" did the work it was intended to do.

Now, Gentlemen, in considering damages you will not limit yourself to the number of volumes which Mr. Murray has had left on his hand, but you will remember that the six-months period has expired now, and that it has been offered, and it can be offered, under the terms of the arrangement between the publishers and the trade, at any price as a second-hand book which it pays the booksellers or the libraries to sell it at. You are, therefore, face to face with the fact that the volumes that remain in Mr. Murray's hands have no value at all, or have only the small and inconsiderable value which belongs to second-hand volumes. Now you will ask, and my Lord will direct you upon this, whether you are limited in the damages which you will probably think it right to give in this case to the actual loss which Mr. Murray has sustained by reason of the statements made by "Artifex." Gentlemen, you are not so limited. If we are right in the construction which we put upon this first letter of "Artifex," they have been guilty of an abominable attack upon a man whose reputation stands as high in the City of London as the reputation of "The Times" itself—of a family which has carried on, with honourable traditions, a bookselling business for as long, I think, as "The Times" have carried theirs on, and which has bequeathed from father to son, from the great-grandfather of the present Mr. Murray, through the generations, a lofty standard of commercial integrity. The law has decided, with great wisdom, that where there is a libel you may deal with that in considering

the whole of the circumstances of the case, and may have regard to the position of those who have made themselves responsible for the libel and the position of the man who is libelled.

Having dealt with the question of damages, I invite you for a moment or two to consider the character of the defence which is put before you by my learned friend, Mr. Eldon Bankes. He said, first of all, that this is fair comment, and he read part of an authority to you with the object, I suppose, of satisfying you that this really was a fair comment. On the subject of fair comment I shall detain you for a very short time, but I would lay down three propositions as to the accuracy of which my Lord will later direct you. The first of those propositions is this, that if the man who makes the comment on a matter alleged to be a matter of public interest makes it, not with the desire to give any information to the public or to a private individual which he thinks the public or the individual has a right to know, but if he makes it with the intention of injuring his enemy, makes it with an indirect motive and maliciously, it is an abuse of the privilege which, under some circumstances, the law will extend to a comment. I say, in the second place, and I will read the very Judgment which my learned friend referred to in the case of *Merivale v. Carson*, in which Lord Esher said a writer is not entitled to overstep the limits of fair comment, and impute motives which are not warranted by the facts. That, Gentlemen, is the second qualification. The third qualification upon the privilege which is claimed under the head of fair comment is that the facts which are relied upon as being the foundation of the comment must be accurate. If there is any fair comment, or any ground for claiming fair comment, that ground is lost if the man who makes the comment supports it by alleged facts which facts turn out on examination to be ill-founded and to be baseless.

Now, Gentlemen, how does this matter stand, judging

it by these standards ? We discover first on that, that for some considerable time there has been a warfare in progress between "The Times" Book Club on the one hand and the Publishers' Association on the other hand. How is that put on behalf of "The Times" by my friend, Mr. Eldon Bankes ? He tells us that Mr. Murray has been a protagonist on one side just as Mr. Hooper and Mr. Moberly Bell have been the protagonists on the other side, and it is suggested to you that because Mr. Murray played a prominent part in the contest which has been waged against "The Times" Book Club, if I understand the suggestion which is put against Mr. Murray, that for that reason his case, from the point of view of this libel, must be judged differently from the point of view of a man who had not played that prominent part. Gentlemen, it is true that there had been given hard blows in the course of this book war, but it is also true that, though expressly challenged to do so, they have failed to produce from the beginning of this controversy to the present day one statement made by Mr. Murray that was not true or one insinuation that was not well founded, and they have not produced the letter, as to which we heard something, in which it was suggested that Mr. Murray made use of intemperate language. Gentlemen, there were hard blows given in the course of "The Times" book war ; but until the appearance of this review, and until the appearance of this letter, there was not a single blow given that was under the belt ; and when the blows given in the course of this war are under the belt, it is then, and then only, that it becomes necessary to ask the Jury what is their view of the transactions which have brought us here.

Let me now remind you very briefly indeed of one or two of the material incidents in the course of this discussion which led to "The Times" indulging in the "fair comment" which appeared above the name of "Artifex." You have been reminded of this before, and I will only deal with it in general outline. We have

had it, in the first place, that on October 7th "The Times" were perfectly familiar with the connection which Lord Esher had with the publication of the Queen's Letters. You will not forget that on that date Mr. Moberly Bell writes to Lord Esher and says that "The Letters of Queen Victoria" are to be published at this prohibitive price, and asks him whether he cannot do anything to modify the price which it is proposed to charge. The importance of that is that as early as October 7th, in 1907, "The Times" knew perfectly well that there was somebody else to be consulted besides Mr. Murray, and that that somebody else was Lord Esher, who had been entrusted with the publication of these letters by the King. Now what is the next step which is taken, and even perhaps a more significant one? That is the one letter which is written on October 14th by Mr. Moberly Bell to Mr. Murray, and, Gentlemen, although you have listened with the greatest patience to this letter more than once, I ask you to allow me to remind you of it once again, for this reason, that it strikes at the heart of the whole case that is put before you as fair comment. Consider the terms and the circumstances of Mr. Moberly Bell's letter, and ask yourself whether the defence of fair comment can be substantiated in the light of it. "My dear Murray,—You may remember that in our original negotiations, two years or more ago, there was some talk of Queen Victoria's Letters, and you said that with regard to this book you might be disposed to make very special terms. Are you still of the same mind? The book is, of course, of interest, but the price is such that it can only have an official and circulating-library sale. We are willing to lose a little money on it if you care to meet us half way, and would take a very large number if you are disposed in this one case to deal with us direct. If not, we can do with the small number we have already arranged for; but for the sake of the late Queen we should like to give the book as good a send-off as possible."

What is the significance of that letter? Why is it a letter which, as I suggest to you, strikes at the heart of the claim to the *bona fides* of "The Times" in connection with this letter of "Artifex"? It is for this reason, that in that letter Mr. Moberly Bell is proposing to us a special arrangement. Is he proposing to us that we shall reduce the price of it in the interests of the public, on behalf of whom he is so deeply concerned? Is he mentioning it to us in the interests of his loyalty to the late Queen, on behalf of whom he made such loud protestations in his letter to Lord Esher? He is mentioning it with one object, and one object only, that "The Times" may have a prosperous deal in connection with the sale of this book, and just as Mr. Murray is going to make his profit so "The Times" Book Club, by making a special arrangement, may have their profit under the same circumstances. If, Gentlemen, we were swindlers they wished to be swindlers too. We were plunderers, and they only wanted a share of it. The public were victims, and they only grudged us a monopoly of the fraud. Mr. Moberly Bell wished to become a co-adventurer with Judas Iscariot. That was the meaning of this letter if the expressions afterwards complained of in the correspondence and in the letter of "Artifex" are well founded. Now, what happens next? The next thing that happens is that the book is published two days after this letter of Mr. Moberly Bell on October 16th. On October 17th the review appears. The evidence that has been given to you in reference to the review is still very fresh in your minds, and therefore I may make my observations upon it summary in their scope; but what are the salient points as to that? The salient points are these, that it is, and has been, one of the brightest boasts of "The Times" to keep all their commercial enterprises unconnected with their department of literary criticism. There is nothing more creditable to "The Times," and nothing which the publishers of "The Times" would

be more reluctant to see disappear from its columns than the conspicuous fairness with which for generations it has separated its discussion of public affairs from considerations of its own private interests or the interests of the party which it commonly supports. It has been to that high standard of integrity that it has owed the unique position which it has occupied in the journalism of the world. What do we find in this review? We find the editor of the Literary Supplement, Mr. Richmond, called to give evidence in the box. What does Mr. Richmond say: "I never knew an occasion on which Mr. Moberly Bell had interfered with a review which appeared in the Literary Supplement. I never knew a case in which that had been done before. I never knew a case in which it had been done afterwards. I did not like the idea." I think I represent to you a fair statement of the effect of Mr. Richmond's evidence. Why was it that Mr. Moberly Bell suddenly interpolates, or attempts to interpolate, in a literary criticism an economic observation as to the financial conditions under which this book was to be produced? There is no concealment of any kind as to why he put it in. It was not his business. He was not slow to remind us, when we asked him the question about subjects which were, I agree, remote from the management of "The Times": "That is not my business; I am the business manager." Why do we find Mr. Moberly Bell suddenly taking an isolated and unprecedented interest in the literary criticism on a book of political interest, and suggesting to the editor of "The Times" that he shall put in this observation, this totally unfounded observation, as to the price of the book? Gentlemen, as I have said, Mr. Moberly Bell, to do him justice, makes no secret of it. He did not think this statement in the review was going to benefit Mr. Murray, or was going to benefit the sale of the book. The desire as to which he spoke so warmly in his letter to Lord Esher of giving the Queen's Letters a good send-off, has now dwindled to the introduction

in the midst of a literary criticism of a comment on its price, which certainly would produce, and was intended to produce, precisely the opposite effect. Now mark the subsequent history of Mr. Moberly Bell's interlineation, written with his own hand. Then it is given to Mr. Bruce Richmond. Mr. Bruce Richmond's view is the old-fashioned one that literary criticism should be left to literary men. Those who have axes to grind with regard to outside projects should keep on their own ground, and allow him unrestricted control in the literary columns of "The Times." However, Mr. Richmond goes so far, out of deference, no doubt, to the business manager of "The Times," reading between the lines, as to interview Mr. John Bailey on the point. Then, how does Mr. John Bailey treat it? Mr. Bailey introduces a perfectly harmless observation, which was an observation which, if it had been spontaneous, would have given us no grievance at all. Not being spontaneous, it was perhaps a little malignant, and it might have been made the subject of moderate complaint. At any rate we should never have been here if the review had been left, and if "Artifex's" letters had not followed upon the review. What happens? The sentence is inserted in the review with which you are familiar. Now we come to the main stage of this case, which depends on fair comment. It is the undoubted right of the greatest newspaper in the world to avail itself of the comparative immunities given by the law to those who rightly use, and do not abuse, the claim of fair comment. But was the comment fair? Consider the letter of "Artifex." I do not doubt that you, like myself and others, are readers of "The Times." I do not doubt that you have attached the same weight which, I venture to say, all Englishmen have attached to the integrity of the correspondence columns of "The Times," and I ask you, without any fear as to the answer you think it proper to make, what is a member of the public entitled to believe when he opens "The Times" and finds a letter there in large type, and signed, not by a

real name, but a *nom de plume*. Finding that in "The Times," what is he entitled to assume? Is he not entitled to assume in the first place that that letter comes from an independent correspondent of position, a person who is offering honest views to "The Times," and not views that are manufactured from within "The Times"? Gentlemen, I may make this further observation. We have had some talk about the fulness and the candour with which "The Times" have laid their evidence before you. One thing in this case that cries to Heaven for explanation is why a letter appearing in the correspondence columns of "The Times" as an independent contribution, not springing from a tainted source, was allowed to appear with the appearance it possessed. On whom in "The Times" office lies the responsibility of sanctioning this fraud? Did it lie with Mr. Moberly Bell? He has told us it did not. Did it lie with Mr. Hooper, who is busy elsewhere? He was very careful to explain it did not lie with the leader writer; that the responsibility belonged to one man, and one man alone, and that is to the editor of "The Times," and it is the editor of "The Times" who has not been called here to-day to explain the abuse of a responsibility which was committed when the letter was allowed to appear in this way. Then, Gentlemen, mark the first words of this letter so malignantly calculated to injure the sale of the book which Mr. Moberly Bell was anxious to forward. Mark the first words: "Your reviewer of 'The Letters of Queen Victoria.'" What spontaneity! What independence! The man who was thinking "Shall we pay three guineas for this book which 'The Times' is so anxious to assist?" sends an independent letter signed "Artifex," beginning "Your reviewer." Mr. Moberly Bell has with great force pointed out to-day that he would not have said "Your reviewer," but the suggestion is apparently made that Mr. Hooper, who is a long way off in the Book Club, might properly use the expression "Your reviewer," because he is quite distinct in everything, and therefore Mr. Hooper

may use the expression "Your reviewer." Until Mr. Hooper was called into the box that was a most admirable explanation; but when Mr. Hooper was called into the box he said: "Oh no; you have come to the wrong box, and you must ask Mr. Ross about that; it was Mr. Ross who wrote it." Fancy Mr. Ross, the leader writer of "The Times," writing to "The Times" and saying "Your reviewer." Why, Gentlemen, he is much more in that particular difficulty than Mr. Moberly Bell was, because Mr. Moberly Bell might fall back on this and say: "I was only the business manager; he might not be my reveiwer." But here is his colleague, the leader writer, Mr. Ross, and he is ordered away somewhere with the editor of "The Times" just when he is wanted to explain the expression he used, which is the expression "Your reviewer."

What are the merits of this matter? I can use no other word than to say it is dishonestly put forth to the public as the expression of an independent view. What are the merits? It is not disputed that language is used in the course of this, and language, as I have said, of a man who is as honourable as any one who has ever been connected with "The Times," which imputes to him gross acts—acts of which if a man were really guilty he would hardly be fit for the society of respectable men. I do not think I am overstating the matter. I put it to you in one sentence, which, in my judgment, is almost the strongest I can use, that when you consider the position of Mr. Murray, a man who has been designated by His Majesty the King for this responsible and delicate duty of giving to the world the letters of the late Queen Victoria, a position which I cannot deny is to some extent of a fiduciary character, though it involves no general authority of a trustee—enjoying such a position, receiving that authority from a source so august—I can conceive no reflection more painful, more grievous, more unjustifiable, and less warranted by facts than that Mr. Murray has abused that position. What does

the letter say on this point ? It says that he abused the fiduciary position which he occupied. Could there be a grosser libel on a respectable publisher than that ? Now I have told you, and, my Lord, I venture to think, will repeat to you, that the facts on which the libel is based must be justified, and they must be true in fact. What are these facts ? We have them from my friend, Mr. Eldon Bankes, which is not seriously disputed now, that if you add our establishment charges, and if you add what, in fact, we had to pay the authors, the price which Mr. Murray gets of 2s. 3½d. per set is the real profit which he has actually made as against the preposterous figure which is put forward in the letter of "Artifex."

What is the answer that is made ? The answer is that when we spoke of plunder, when we talked of extortion, when by another pretty touch we passed on to Judas Iscariot, we did not really mean that Mr. Murray could properly be described in any one of these ways. What we meant was that if he had not to meet establishment charges, and if he had not to pay his authors, and if he had acted for himself, omitting all the money that goes to his establishment charges, and the money he paid to the authors, he would have been Judas Iscariot, he would have been an extortioner, he would have been a rogue. In fact, to put it in another sense, he is not a nett rogue ; he is merely a gross rogue. From the point of view of the public, could any contention be so completely idle ? I ask you as members of the public to conceive what position it would present to the mind of a man who was reading this article, and was judging whether or not Messrs. Murray were behaving themselves as respectable and honourable tradesmen. How do you think they would view it ? They would say to themselves on this letter, it is clear that they are making an extortionate profit, they are reserving to themselves by the abuse of a fiduciary position a share of the profits of an enterprise which should have been spent in

order that the public at large might enjoy greater facilities for reading the Queen's book. Is not that what any man would say? You know now that all they meant was, not that Mr. Murray got too much, but that Mr. Murray and the two authors got too much, or that the establishment charges were too high. Gentlemen, was Mr. Murray cross-examined as to the only way in which such a contention could be founded at all? Was Mr. Murray cross-examined as to whether he could not have made a better bargain with Lord Esher and Mr. Benson? I should have thought that a publisher of Mr. Murray's experience might have been trusted to make the best bargain that he reasonably could with those two gentlemen, and we know from the Agreement of 1903 what in fact was the nature of the bargain that Mr. Murray did make with those two gentlemen. The only defence that is raised in respect of this first letter is not the defence that we were right from any point of view, but that we would have been right in calling you a swindler, or whatever else the words are, if you had been getting the money which was going to the authors, which you never touched, and if you had not been keeping up your establishment expenses Could there have been a more temperate or moderate letter than that written by the solicitors to Mr. Murray to Mr. Moberly Bell on the appearance of this libel? I call attention again in that letter to a significant sentence. Mr. Murray had no desire to go to law, and Mr. Murray asked for no costs at that time. Mr. Murray said that what "The Times" should do was to withdraw and to apologise for the gross stigma which it had inflicted on his reputation. You have heard "The Times'" witnesses in the witness-box. Do you not think they would have been well advised, without spending a farthing on legal expenses, and not being asked to pay anything in the way of damages, although some of the damages had been sustained, while by their actions they could have prevented some of those damages from being sustained?—do you not think "The Times"

would have been well advised to take advantage of Mr. Murray's offer? Mr. Moberly Bell says that when he gets a letter from a solicitor he never deals with it himself—he immediately hands it over to his solicitors. All I can say to Mr. Moberly Bell, having heard him in the box, is that I think he does himself injustice. I do not think he is a man who would take instructions on matters of policy from any solicitor. I believe him to be fully capable of forming his own view as to the propriety or impropriety of what he has said, and as to the propriety of making an adequate apology for what he has said if it exceeded the limits of proper criticism. How did they deal with it? They published in "The Times," you know well enough, not an apology. They all say now, "We regret those words; perhaps one or two of them went a little far." They all regret them now, but they would not apologise. Great newspapers have little stomach for apologies. They would not say they were wrong even in the Bowdlerised apology, which was the only thing they would propose at all. What do they say in that? "In our issue of the 19th inst., under this heading we published a letter signed 'Artifex.' With reference to this letter Mr. John Murray's solicitors write to us: 'The work is not Mr. Murray's property; he has merely been employed as the publisher, bearing the cost of its production, which far exceeds the figures in the letter, and he will be remunerated by a fraction of the net profits.' We willingly give publication to this statement, and regret any misstatement or error our correspondent may have made." They do not themselves express any conviction at all as to the accuracy of what they have said. They have got full materials before them in our letter, they know well enough what they have said is unwarrantable, and all they do is to publish our statement, or part of our statement.

The matter does not rest there. Mr. Hooper reads this apology down at the Book Club, and it does not satisfy him at all. This is not part of his plan of cam-

paign, that there should be apologies circulated for letters that he and Mr. Ross have concocted between them, so Mr. Hooper goes and sees Mr. Ross again, and suggests to him that there should be a further answer. They must go and get the American contingent to answer their own apology in "The Times." I do not know who wrote this apology. I think it was the solicitor. Mark the circuitous nature of the operation. Mr. Moberly Bell goes to the solicitor, the solicitor goes back to Mr. Moberly Bell with an apology, and Mr. Moberly Bell says the editor is to put it in the paper. Mr. Hooper reads it in the Book Club, and goes to Mr. Ross and says : "Here is an apology; let us answer it," and the next step is that the second letter of "Artifex" appears, answering, not Mr. Murray, but answering their own apology; and then how do they deal with the position at that stage? "If the work is not Mr. Murray's property there is nothing that can offer the least indication of the fact. If the cost of production actually exceeds the figures I gave, Mr. Murray has not bought in the best market. Mr. Murray's case would have been strengthened by his telling us what great expenses there were in connection with the production, in the absence of anything to indicate that the book is not brought out by Mr. Murray in the ordinary way. I submit that my criticism was perfectly justifiable." Mark the dexterity of the argument. You first of all publish a letter in which you say in substance that a citizen of repute is an extortioner and Judas Iscariot. When he writes and ventures to suggest that the language is a little strong, having regard to the nature of the transaction, then you publish another letter, in which you say, "In the absence of anything to indicate that the book is not brought out by Mr. Murray in the ordinary way." I submit I am perfectly entitled to say, in the name of common sense, why is Mr. Murray called upon to give evidence of the fact that the book is brought out in the ordinary way? If "The Times" wants to found assaults and criticisms upon Mr. Murray's personal

integrity it lies on them to show that the book is brought out in an extraordinary way, and not on Mr. Murray to show that his book is brought out in the ordinary way. Gentlemen, I trust I have said enough to you, in a case in which you have listened with admirable patience, to show that from beginning to end of the case, which has been an undefended one, the only point which will engage your attention is the amount of the damages that should be given. Gentlemen, you will not forget, I know, that you are dealing with the most influential journal in existence, the paper of which all Englishmen are justly proud, and which has been an example to journalism all over the world. But, Gentlemen, although it has been said of "The Times" that they can unmake Governments, it is the business of Juries to see that they do not unmake individuals; and I appeal to you to say that this powerful journal has attempted to inflict a gross and unwarrantable injustice upon a private citizen, whose character is as high as that of its own managers. For that injury, so undefended, I ask you to give Mr. Murray substantial damages.

(Adjourned to to-morrow morning at 10.30.)

## FOURTH DAY.

*SUMMING-UP*

Mr. Justice DARLING : Gentlemen of the Jury, you have now heard all the evidence which the parties can lay before you in this matter, and it becomes my duty to indicate to you what are the points you are to consider in arriving at your verdict, and also to direct you as to the law which will decide such questions as are to be decided by the Jury.

As you are aware, this action is brought to recover damages for the publication of what is alleged to be a libel. It is a very unusual action in many respects, particularly because of the parties to it. It is hardly too much to say that the Plaintiffs, at all events the house of Murray, and "The Times" newspaper, are practical institutions of the country, and I cannot help feeling myself that, so far from being a common-place action for libel of the class of which one tries perhaps two or three in the course of a week, this is much as if it were a quarrel between Magna Charta and the Bill of Rights. It arises, as we have been told, because there was raging what has been called the book war, and Mr. Bankes in his address to you yesterday half indicated that something like operations of war might be permitted to people who were engaged in that particular difference. Book war is, of course, a misnomer. No private people have a right now, at all events, to wage war with all its horrors. If people engage in a book war, what they do is not to be regulated even by the Geneva Convention.

It is to be regulated by the ordinary law of the country applied by Judges and Juries. If either of them does that which amounts to the publication of a libel upon the other, no matter what may have been the conduct of the parties up to then, at any given moment either of them has a right to complain if the law of the country is broken.

Now, Gentlemen, I am not going, and Counsel have not attempted to go, into the origin of this difference between "The Times" and the publishers, because their difference was not with the house of Murray alone. It was with many other publishers. I cannot myself see that there is anything inherently wicked in the position taken up by the publishers. They were publishing books to which the law accords a copyright, and they have ascertained that people will only buy certain books while they are new and will only read them while they are new. It is not my habit. Personally I never read the book of the day; I rather read the book of the day before yesterday. It saves one reading an enormous amount of what every one soon forgets; but apparently that is not altogether the common habit, and the book of the day has a vogue which it will not have in six months' time; and so the publishers said: "We cannot sell these books at the price which we put upon them. We shall have to sell them at a great deal more. We cannot sell them if people are to be allowed to sell them second-hand, or to sell them at a reduced price, until they have sold at the full price for six months." Is there anything wicked about that? "The Times" disapproved of it, and "The Times" is entitled to disapprove of it, and they are entitled, if they can, to buy them cheaper. Somehow they did. But this led to a good deal of contest apparently between the publishers and "The Times," and each of them is entitled to his opinion and is entitled to act as he pleases, so long as he acts within the law. The word was used that Mr. Murray had boycotted "The Times." In certain circumstances, as you very well know, to boycott is to be guilty of an illegal and

punishable conspiracy, and if he had done anything against the law he could have been punished by the law. Apparently he did not do anything of the kind. He did not write anything of which a complaint has been made in a Court of Justice ; but there came a time when he published this particular book. As we know, the late Queen had left an enormous correspondence—correspondence much of it upon matters of State, correspondence with her Ministers, with highly placed people, her relations ; and there are many volumes of it : from her early years, when she was writing little affectionate notes to her near relations, down to the day of her death. And what has been published so far only comes down to the year 1861, I think it is. So that there is an enormous amount left (this is worthy of your attention) possible still to be published. Well, the publication of this remarkable mass of literature was entrusted to Mr. Murray. He does not own the copyright, that is quite clear. We know who does. We know who it is who can decide whether any more of this is to be published or not. Mr. Murray cannot decide ; and as I say this I may point out the futility of that offer, a somewhat irregular offer, but I did not think it worth while to complain, made yesterday, that somebody would give £3,000 to be allowed to publish 100,000 copies of this book—an offer made to Mr. Murray, but it might just as well have been made to one of you. Mr. Murray cannot decide. He has not the copyright. He is a publisher. He has entered into a contract to publish, and if he is told to publish another edition upon those terms he can do it, and if there is a profit the profit is regulated by that agreement ; but he cannot decide whether he will accept that offer or whether he will not. Now, Mr. Murray, having been employed to publish this book, entered into a contract with Lord Esher and Mr. Benson, who were acting on behalf of the owner of the copyright, and they are described in the agreement as the owners of the copyright, and so as between Mr. Murray and themselves they are ; but we know,

as a matter of fact, they are only persons acting on behalf of the owner. Mr. Murray and those who were directing him chose a particular form for this book. They decided what should be put into it in the way of works of art ; and they decided (we do not know that Mr. Murray alone decided it) what was to be the price ; and the price is three guineas. Upon that "The Times" was dissatisfied with the arrangement so far as it knew it.

"The Times" knew very little of the arrangement, but it was dissatisfied with it, and first of all the matter was mentioned in the review of the book. I mean to return to that, so I will not dwell upon it now ; and ultimately the letter signed "Artifex," which is complained of here as a libel, was written ; and it is important for you to remember the action is brought to recover damages in respect only of the first letter of "Artifex." It is not complained that anything in the review, either that which was written by Mr. Bailey or that which was composed by Mr. Moberly Bell, and put in by Mr. Bruce Richmond, is actionable libel at all—not a word of it. What is complained of is what was written and printed in "The Times" as the first "Artifex" letter. It is not said that the statements in that letter are true. If a man is charged in a civil Court with libel it is a clean defence to prove that what he wrote and published is true. It is not necessary to prove any more. That defence is not pleaded, but a defence is pleaded which, if it is made out, entitles the Defendants to a verdict. What is pleaded is this, that the "Artifex" letter was written concerning a matter of public interest ; and, further, that it is fair comment or criticism upon that matter of public interest. Now it is necessary to be very careful here, because here the defence divides itself into two portions. Whether this "Artifex" letter dealt with a matter of public interest is for me to decide as Judge, and if I go wrong the Court of Appeal can set aside my decision ; but that is my responsibility, and I must give my decision upon it. Therefore you will not trouble at all as to whether this was a matter of public

interest or not. I must decide it, and I will decide it now. I state this, so that it may be taken down in case my decision should be questioned, and not for your information, but for the information of the learned Counsel, and possibly the Court of Appeal. In my opinion the publication of a book is not necessarily a matter of public interest. I should be prepared to hold of some books that the publication of them was a matter of public interest. Of other books I should be prepared to hold that the publication or suppression of them was of no interest to anybody, and therefore not of public interest—to nobody except perhaps the persons who had written them, and therefore not of public interest ; but what is said to be here of public interest is not the book. A book may be of public interest, but what is said to be here of public interest is not the book, but the publication of the book, and the method or manner of the publication of the book. Now I do not think the method or manner of the publication of every book would be a matter of public interest, but I am prepared to hold, and I do that seeing what this book is, seeing whose letters they are, seeing the subjects with which they deal—matters of State, matters concerning the welfare of the people of this country, matters concerning the character of those by whom they were governed—I am prepared to hold that that was a book of public interest, and that the publication of it was a matter of public interest, and that, because of the nature of the book, the manner and method of its publication, and even the price at which it was published, were all of them matters of public interest.

Now, that being settled, Gentlemen, my duty with regard to that part of the case is done. Now your duty begins. You may take it that this "Artifex" letter did deal with a matter of public interest. Now, was it comment, and if it was comment was it fair, honest comment ? As to what is comment, it is not comment to state facts only. Comment must give opinion. You can express opinion in the form of stating facts. You

might say that in your opinion a man was a bad man by saying, "In my opinion he is a murderer." Many instances will occur to you. You might comment on a person or on a thing by stating a matter of fact. Supposing you were criticising a picture and you were to say : "This professes to be an oil picture ; as a matter of fact, it is executed in whitewash and red ochre," you would then state matters of fact, but it might very well be that anybody would understand that the comment was that it was a bad picture and painted by a man who did not know what to paint with. So that I am not going to tell you that you cannot comment by merely stating matters of fact. But if you state matters of fact in order to found upon them comment, the matters of fact must be truly stated, and then the comment must be fair. If you have to state matters of fact in order to comment upon them, you are not entitled to a verdict if you state the matters of fact untruly, and then comment fairly on the matters of fact so untruly stated. If you are stating matters of fact in order to comment, you must state the matters of fact correctly, and even then your comment must be fair. Now, as to what is fair comment, opinions might differ ; but I may tell you at once that fair comment does not mean the comment with which you agree. You will see at once why it should be so. Suppose one is criticising a work of art. The man who comments upon it might comment perfectly fairly, and half of you might agree with his comments, and the other half might think them silly, or unfounded, but they would still be fair ; they might be fair. On the other hand, they might be grossly unfair, and yet a large number of people might agree with them. That has happened. But I will read to you what has been decided as to what fair comment really is, and you will remember that the test is not whether it is comment which approves itself to your judgment or your taste ; it is comment which, in the circumstances, comes within the rule which I am about to read to you from a case long ago decided. The case I am going to refer to is

the case of *Campbell v. Spottiswood*, and in that case Mr. Justice Crompton, whose Judgment in that case has been approved over and over again, says this : " Nothing is more important than that fair and full latitude of discussion should be allowed to writers upon any public matter, whether it be the conduct of public men or the proceedings in Courts of Justice or in Parliament, or the publication of a scheme or a literary work ; but it is always to be left to a Jury to say whether the publication has gone beyond the limits of fair comment on the subject-matter discussed. A writer is not entitled to overstep those limits and impute base and sordid motives which are not warranted by the facts, and I cannot for a moment think because he has a *bonâ fide* belief that he is publishing what is true that that is any answer to an action for libel." It will not do, you see, to be unfair and say : " Well, at all events, I believed what I said." That will not do. Many people are very ready to believe. That does not entitle them to make comments which are not fair. One other passage I will read to you from what was said by another Judge. These are the words of Lord Esher when the Master of the Rolls—not one of the authors of this book : " I think," said Lord Esher, " the meaning is this : Is the article, in the opinion of the Jury, beyond that which any fair man, however prejudiced or however strong his opinion may be, would say of the work in question ? Every latitude must be given to opinion and to prejudice, and then an ordinary set of men with ordinary judgments must say whether any fair man would have made such a comment on the work." So you see a man may be prejudiced ; he may be angry, and yet his comment is not necessarily unfair. But on the other hand, although anger does not preclude fairness, anger does not prove it. There are many people who think that because a man is a hot-tempered man he is necessarily an honest man. I do not say so. You may have your own opinion about it. A man is not entitled to be unfair because he is angry. He is not entitled to be unfair because he is prejudiced. But if

he is fair, he is not guilty because he is angry or because he is a prejudiced man.

Now, Gentlemen, having said that much to you upon the question of the law, I will just very slightly sketch to you what happened in this case as far as the evidence has disclosed it. This book was announced—it was simply a very early advertisement—as being about to appear, and the price was given; and no sooner was that seen by Mr. Moberly Bell than he came to the conclusion that the price was too high. At that time, of course, he did not know anything of the manner in which this agreement had been drawn up between Lord Esher, Mr. Benson, and Mr. Murray; he did not know what Mr. Murray had to give; he did not know what we know, that whereas ordinarily the expenses which the publisher takes upon himself for correction of proofs is 25 per cent. of the cost of printing, that in this case 25 per cent. was struck out and 50 per cent. was put in; he did not know that this book was to be printed for proof upon exceptional paper because it was being sent to many people not accustomed to journalism, and so on—you know the kind of people I mean—who would have an interest in correcting it. Therefore, it was to be sent out on exceptionally good paper, with very wide margin, and so on; he did not know that it would be necessary, as it was, to employ a number of amanuenses to copy and recopy, and that many visits to Windsor of an expensive character were necessary. He simply, as a first impression, came to the conclusion that this was an exceptionally high price—too high a price, that he has told us, and he told Mr. Bruce Richmond so. Mr. Moberly Bell is the business manager of "The Times," and Mr. Bruce Richmond is the manager or editor of the Literary Supplement, which is a distinct part of "The Times," and Mr. Bruce Richmond was told by Mr. Moberly Bell that he thought this book was too high in price. Mr. Bruce Richmond told us what he thought about it, and they discussed whether it should be mentioned by the reviewer. Mr. Bruce Richmond then did

what everybody admits to be perfectly proper. He selected as good a man as could possibly be found to write the review of this book. He selected Mr. John Bailey, who at this moment is the acting editor of "The Quarterly Review"—a Review published by Messrs. Murray themselves—not that they selected him, but he was selected because of his known literary ability to edit that review during the absence of the regular editor. Mr. John Bailey read this book, and he wrote what everybody says, and what Mr. Murray himself says, is a very excellent and just review. When he met Mr. Bruce Richmond he had been asked by Mr. Bruce Richmond if he thought the price was too high, and he said : "I know nothing about the expense of publishing ; but I buy books ; and looking at the book, supposing I were asked to buy it, I do think it is a high price." That is all he said, and all he thought. Then he was asked : "Would you feel justified in mentioning the price in the review ? Have you any objection to mention the price in the review ?" There did not seem to be anything unfair about that. Nobody says there was. Nobody says that there was anything at all unfair about calling attention to the price in the review, and really, if it was to be done, I cannot imagine it being done in a milder and more polite manner than the manner in which Mr. John Bailey did it, because all he did was this. He wrote this passage : "No one who wants to know what was really happening in England and in Europe between 1837 and 1861 can do without these volumes," and then he put as a kind of sad ejaculation, "Alas that we should have to add, those who can afford to buy them." I do not say those are the exact words, but words equivalent to them. That was all he wrote, and he left a space because, as you have seen, everybody who writes for "The Times" is liable to have his work edited, and his work was to go first to the manager or editor of the Literary Supplement, Mr. Bruce Richmond, who could put in there something more if he liked, just as he could, if he chose, have strengthened any praise which Mr.

Bailey had given to any passage in the book, or have strengthened any blame which he had given to any portion of it. There was a space, and Mr. Bruce Richmond could have written in what he liked. Mr. Richmond apparently had several tries to improve upon what Mr. Bailey had written. He could not do it. He could not satisfy himself that he could add to what Mr. Bailey had written anything better, and in those circumstances he had recourse to what Mr. Moberly Bell had given him before ever a word of the review was written ; and as I have said, Mr. Bruce Richmond might have edited Mr. Bailey—because he did much more than that, he had the temerity to edit Mr. Moberly Bell. This is Mr. Moberly Bell's manuscript, and he struck out some of this ; he did not publish it all, but he published what you know, and it would appear that this was written really for publication—it is suggested that it was, and it does not look unlikely, because it begins as though it was to follow upon something. Mr. Moberly Bell began : "But another grave mistake has been committed in the method of publication," which looks as though this was to follow on something pointing out an earlier grave mistake. Mr. Bruce Richmond cut out the final paragraph of Mr. Bell's manuscript, and he put into the review what you know, concluding : "But the three volumes, which might, one would imagine, have been produced at 10s., and which at a reasonable figure would have sold by hundreds of thousands, are offered to a privileged few at £3 3s." That he put and that was published. Messrs. Murray made no complaint about that ; they did not say it was unfair ; they do not say it now. You may say, then : Why were we ever told of it at all ? Mr. Bankes complains that you ever were told of it. He says—and it is for you to judge, not me—it has nothing to do with the matter. He says that Mr. Murray did not say it was a libel, that Mr. Murray did not say it was what ought not to have been written, and that it ought not to have been mentioned in this case ; but Mr. Lush replies : " Well, it is right to mention it,

because it shows that before ever the book had been seen by 'The Times' they had a strong prejudice against the publisher of it, and with regard to the book itself he was *parti pris.*" It is not for me to tell you whether that is so or not. It is for you to judge. I cannot say myself. I was not asked to exclude the evidence. If I had been asked I could not have done so. There it is, and it is for you to consider if it throws any light upon the case, and, if so, what.

Now, Gentlemen, that having been done, the review was taken advantage of by Mr. Hooper to found upon it further comment upon the price of this book. Mr. Hooper is the manager of "The Times" Book Club. He is a business man. He was trained, he tells us, to be a publisher in America, and he was a publisher in America, and he has come over here and he is a publisher here ; and besides being a publisher here, he is the manager of the Book Club. Now, Mr. Hooper does not profess to be a literary man. His interest is a commercial interest, and he has told us that when he saw this he wanted to make further comment upon it, because it came within his purview as the man who was to make a success of the Book Club of "The Times." Now, here it is that Mr. Bankes says : Oh yes, now these are the operations of war ; the Book Club of "The Times" is one of the sides and Mr. Murray is the other ; and now we come to what is really complained of in the action. Mr. Hooper wanted something written to follow up what he had seen in "The Times," and what knowledge he had not himself he got from a man employed in some department of his in "The Times" Book Club, a man who knew about the price of things, which he did not. He got all those things together, he put them down as materials, and then he might, of course, have used those materials to write the letter, which he might have signed in his own name or with any other. He did not do that. He seems to have distrusted his own powers in this respect ; and it may well be that if these prices and so on had been put down simply in a dry-goods style appropriate to the

style of the book department, it would not have attracted much attention and would not have done Mr. Murray any harm. Mr. Hooper, therefore, looked for some one who could do what he could not do. He says he did not want to find a prophet who would prophesy in favour of Mr. Murray. He wanted some one who would prophesy against him. What a pity the appropriate creature was not there to warn him; but he got no warning, and he went on. Now, what did he do? He went from the Book Club, which is some way off, we are told, and went to that home of the modern Muses, Whitefriars; and there he sought for some one who could throw his crude figures and ideas into an attractive shape. It is not uncommon, as you are aware, that in Eastern countries, and particularly, I believe, in Spain, there are public letter-writers. They will write any letter you tell them to write if you give them the points, and are commonly employed, I believe, to write love letters, but capable of writing anything that is required, and no doubt Mr. Hooper could have got practically whatever he wanted in Whitefriars. As I have said, he looked there for what our ancestors used to call a Heliconian, and he found Mr. Ross, and Mr. Ross wrote this which Mr. Murray complains of as a malicious libel. It is a dangerous neighbourhood that to which Mr. Hooper went to get this business done, and I wish that, besides publishing books, Mr. Hooper had happened to read one of the old books—a very old one—in which he would have found these lines: "Near Helicon, and round the learned hill, grow trees, whose blossoms with their odour kill." And Mr. Ross apparently set to work, so it is said by the Plaintiffs, to twine a garland of those blossoms, and this letter is it. "Artifex" signs it. You have read it. I am not going to read it through and through. You will notice some things which are statements of fact. If they are statements of fact, not stated as comment but stated as fact upon which to found comment, then those facts must be truly stated, or the comment cannot be fair. He states, truly enough, that Mr. Murray charges £3 3s. net. Then

he says: "So that after every one concerned has had fair, if not liberal, business remuneration for his work, the book is loaded with 43s., for which there is no justification whatever." What do you call that? Is that comment, or is that statement of fact? No justification, in the sense that I have indicated to you as a defence to what would otherwise be libellous, is pleaded here. The only reason why you want to see whether this is a statement of fact, or not, and whether it is true, is this. Is it a statement of fact? If comment is to be founded upon it, and it is a statement of fact, then it must be a true statement of fact. Is that true—that Mr. Murray charges £3 3s. net? Yes, that is true. Nobody disputes that. Then is this true: "After every one concerned"—that would include the proprietor of the copyright, and those who wrote and those who did everything in the matter—"After every one concerned has had fair, if not liberal, business remuneration for his work, the book is loaded with 43s., for which there is no justification whatever." Now I will go on: "Let us see where this money goes. According to Mr. Murray's rules"—and then they are set out—"Mr. Murray gets 45s. for what cost him 13s., a profit of 32s., or over 350 per cent."—that, Gentlemen, is corrected in the second letter to 246 per cent.—"246 per cent. upon his outlay in three months, equalling 1,400 per cent. per annum. The trade gets 18s. for transferring the book from Mr. Murray to the purchaser." If these things are statements of fact, and they are not truly stated, it is impossible to found fair comment upon them. You have heard the evidence, and I daresay you have formed your opinion as to whether those facts are truly stated, or whether they are not. Then this letter goes on: "That luckless victim"—that is the purchaser—"in other words pays to Mr. Murray five times, and to the bookseller twice the cost of production, making seven times in all—7 by 9s. equals 63s. There is only one qualification to be made. If the bookseller subscribes for dozens of copies before publication—in other words,

relieves Mr. Murray of all risk of the books not selling—he gets 5s. more of the plunder, and Mr. Murray 5s. less.” There is a word that is used there which is not a pretty word. That is a word which is used as comment, no doubt upon this transaction, this business operation. Now, in those circumstances is that a fair word to use? Is it a fair word in the sense in which I have told you comment to be justifiable must be fair? “But the result to the public is the same, because the book is net and the bookseller may not forgo any of his profit of 23s. Now Sir, these figures in any case spell simple extortion.” That is complained of. It is said that is an improper comment upon what really happened. If it is justifiable comment upon the facts stated, if those facts are untruly stated, then that does not help the Defendants. If the facts are truly stated, it is for you to say whether it is fair comment or whether it is not. Then it goes on: “More than two-thirds of the price charged for the book represents an arbitrary addition to the natural price of the book, which would be absolutely impossible if books were published under the ordinary competition conditions applying to other productions. But this is not an ordinary case at all. The literary contents of this book are not Mr. Murray’s property either by authorship or by purchase.” That is quite true. “They are in a very real sense the property of the nation.” It does not look as though “The Times” were drawing quite the distinction which you might naturally think when they say, “The literary contents of this book are not Mr. Murray’s property either by authorship or by purchase.” Then it says, “They are in a very real sense the property of the nation.” In the sense of property, as you and I use it every day—ownership—they are not the property of the nation. They are the property of a private person, not the property of the nation, and that private person might, if he liked, put them into the fire, which if they were national property he might not. “They are in a very real sense the property of the nation.” That is only a figure of speech, just as you

would say the glories of England are the property of the nation, and things of that kind, " and in a more technical sense they belong to the Sovereign as a regal heirloom." I do not know what Mr. Ross knows about heirlooms, but a regal heirloom he may call it if he likes, but what they really are are the private property of the Sovereign. " The career of Queen Victoria is a national asset, and every one of us, rich and poor, is directly interested in whatever can illustrate and make more generally known her strenuous devotion to duty, and her increasing solicitude for the welfare of her country. In days of too general revolt against discipline and self-restraint in every form it is peculiarly desirable that her brilliant example of submission to discipline and of continual application to work done for others should be brought into every household in the land." No one complains of that. It is very laudable—every word of it. " Her letters are a part of the national archives of our time, and it is intolerable that a publisher entrusted with the task of making them accessible to the public should treat them as his personal property." That is strongly complained of, of course. He says he has not, and it is for you to say what you think of it. " Should put upon them a surtax of 43s. over and above all reasonable remuneration for all concerned, and should render them totally inaccessible to all but the wealthy and privileged few." Then it goes on : " I believe that I shall command the assent of all the thinking portion of the public when I say that in accepting this task Mr. Murray assumed a fiduciary position. Were he really imbued with the lofty and chivalrous sentiments which he has publicly professed, that aspect of the case would have presented itself to him very forcibly. He would have felt, too, that the credit and prestige of bringing out a book of this kind would be a reward which might well make him content with a relatively small pecuniary return. He would then have exerted himself to sell the book as cheaply as possible, and to make it accessible to the greatest possible number ; and his reward would

not have been wanting. Mr. Murray has seen things otherwise. He has exploited the great personality of Queen Victoria for his own ends, and coined the national interest in her doings for his own enrichment into 32 pieces of silver, to be precise." Well, Mr. Hooper said : " I regard that as rather bright and attractive writing," and he says : " I do not see that that is a reference to Judas Iscariot, because, as a matter of fact, Judas Iscariot only got 30 pieces." It is for you to say. It may be it is a perfectly innocent observation which has nothing to do with Judas Iscariot. It is for you to say, not for me ; but what is the meaning of " 32 pieces of silver, to be precise " ? Does that mean 30 pieces of silver ? No, that will not do ; 30 pieces is the historic number, but that will not do. That was what Judas got, but Mr. Murray did better. To be precise, Mr. Murray got 32 pieces. I am not going to read the paragraph that follows, and I am not, unless either the Counsel desire it, going to read the paragraph which was put into " The Times " afterwards, which is called an apology. I am not going to read the solicitor's letter. I am not going to read the second letter of " Artifex," unless either the parties wish it done, because this is the libel sued upon. This is the thing that Mr. Murray complains of. This is the document which the Defendants justify. It is not that they say it is privileged. That is a mistake into which some people have fallen. It is no question of privilege. That is the document which the Defendants say (and they are entitled to have your judgment upon it) is no libel, because although it might be a libel—the terms of it might be libellous, as they plainly might—it is no libel, because it has been ruled, as a matter of law, that this was written upon a matter of public interest, and because it is proved (but here it is for them to prove it) that it does not exceed the limits of fair comment, fair comment being what I have read to you from decided cases.

Therefore, I say no more upon the case but this. If you come to the conclusion that this letter is fair com-

ment you will return your verdict for the Defendants. It will then be no libel, and they will be entitled to your verdict without proof of anything more than it is fair comment upon facts truly stated. If, on the other hand, you come to the conclusion that it is not fair comment upon facts truly stated, then it is a libel, because no one can say that it does not come within the ordinary legal definitions of what is libellous. No one has said it in the course of this case ; the sole defence is that it is fair comment. Then if you do not come to the conclusion that it is fair comment, but come to the conclusion that it is a libel, it is published as it is admitted by the Defendants, and in that case the Defendants would be liable to pay damages. Of course, if you come to the conclusion that it is fair comment you need not consider damages at all, because there is an end of the matter, but if you come to the conclusion that it is not fair comment, then you must consider the damages. If a thing is a libel damages are implied. It is implied that the publication of any libel, because it is an actionable wrong, does some injury to the rights of the person of whom it is published, and that injury can only be measured in money. Therefore every published libel unjustified gives a right to some money damages. How much is not measured by the amount of damage to business actually proved to have been done. There is to a man in business a great deal more involved than the particular transaction which is criticised. There is his whole reputation as a business man. There is his character as a business man. Suppose you were to libel a man in a very high position, and he could not show you that, as a matter of fact, he had lost a single shilling, it might be that he would be entitled to receive a very considerable sum, because, you would say, although he cannot say : " I have lost a shilling there or a sovereign there," he must, if this thing were not justified by a public verdict, have suffered in his reputation as a man of honour, as a gentleman, as an honest tradesman, or whatever it might be. And so Mr. Murray, if he had not

turned to his books at all, would have been entitled to say : " If this is not shown to be what the Defendants say it is, I am entitled to damages," and it would be for you to say within reasonable limits, using your best judgment, how much for damage to his reputation, character, and position. But he goes further. He says, " As a matter of fact this has done me downright damage in my business, not over other matters, but over this particular matter," and he has called evidence before you upon which you must make up your mind. Mr. Smith called your attention to it so late last night that I will not repeat it. He says : " The immediate result or effect of the publication of this letter was that the sale stopped ; that whereas I confidently looked forward to the sale increasing and increasing and being able to publish even more of this edition, it stopped, and I have a number on my hands, and even of those that I have sold I have not been able to sell them on the top of the market ; I have had to sell them in driblets, giving exceptional terms, and the six months have gone by ; the booksellers are not bound to sell at the published price, and it has done me all this damage." It is for you to take that into consideration. As to whether the facts with regard to the profits he was going to make are truly stated or not, it would appear from what was said yesterday that that is hardly contended, because what is said is : Anybody reading this would understand that we were not talking of his net profits, but of his gross profits ; and one of the witnesses told me—you heard it, and it is only the simple truth—that if you talk like that you might show with a business that it made what you call gross profits, although, as a matter of fact, it made no net profit at all, because the establishment expenses might eat up the whole of what you would be pleased to call gross profit. Is that the meaning of this ? Is it possible that that can have been meant when it is said that this price ended in the enrichment of Mr. Murray by 32 pieces of silver, to be precise, over each set of three volumes ? They say :

Yes, that is the way you should look at it when you estimate his damages in business, because he would have his establishment charges whether he published this book or not. That seems to me to be a fallacious way of reasoning. If that is right, you might reason it out, taking every book he published in a year and say, You must not put any establishment charges on that book. Then that would be out of the question. Now come to the next book. You must not put any on that book, because you would have had a shop whether you published that book or not, and, therefore, you must put that on one side ; and so on *seriatim* until you say at the end : Then on what may I put my establishment charges ? and the answer would be, on nothing. The way Mr. Murray deals with this question in his evidence is this. At Question 65, at page 23 : "Have you worked out how much profit you yourself made per copy ?—It is a very difficult thing to say. Of course it is easy to say what my one-third share of profit is, but then it is only a small proportion of that that goes into my pocket. I have tried very hard to get at this, and I hope these gentlemen, as men of business, will know that. I think the only way you can get at a figure of that sort is from your balance-sheet, taking what is year by year the cost of establishment expenses to the turnover of your business, and I find that that is  $16\frac{2}{3}$  per cent. I have inquired of other publishers, both here and in America, how it compares with theirs, and I find only one that was smaller, that was a very large business indeed, and one American wrote and told me in answer to my question—— (Mr. Eldon Bankes) : No, we cannot have this." That was perfectly right. "(Mr. F. E. Smith) : Take it generally from your experience ?—My own accountant works it out at  $16\frac{2}{3}$  per cent. on the turnover. (Mr. Eldon Bankes) : Is that the profit ? (Mr. Justice Darling) : No. (The Witness) : If you work out the turnover of this book you will find that over £2,000 of my profits go to establishment expenses. I do not give this as an accurate

figure, but I give it as the only way I know of in which I can approach such a figure." Then I say : " I understand you say that over £2,000 out of your profits you estimate went to establishment expenses—that means out of the gross profits, of course ?—I do, to establishment expenses—that is, to salaries, insurances, and various other items. Q. How much would that leave you your profits ?—Roughly speaking, I make my share of profit would be £2,696, or thereabouts. Taking it at about £2,000 for establishment expenses it would leave about possibly £600 or £700 to go into my pocket." That is his enrichment—what goes into your pocket and what you can spend on what you like. "(Mr. Eldon Bankes) : On the sale of how many copies is that ? (Mr. F. E. Smith) : On a sale of how many copies do you say that is ?—On a sale of 10,000 copies."

That, Gentlemen, he said is what would have been apparently his net profit, £600 or £700 upon this particular transaction. It is said that this document, "Artifex's" letter, does not speak of net profits, but only speaks of gross profits. That is for you to say. If it spoke of gross profits, and spoke of them in such a way that one might conclude that Mr. Murray was only getting for all these 10,000 copies £600 or £700, it would be a very serious question for you to ask yourselves whether it could be fair comment to say of him what is said in the words of this "Artifex" letter. 2s. 3d., he said, was his real profit on each set of three volumes. There is no allusion in this letter to 2s. 3d., or any such sum. It is for you to say whether they were not, when they used those words 32s., speaking of the same thing, for which he says he got 2s. 3d.

There is the case, Gentlemen. You must make up your minds as well as you can as to whether this defence of fair comment upon a matter of public importance is made out or not, and if it is, have the courage of your opinion and give the Defendants the benefit of your verdict, to which they would be entitled as a matter of law and as a matter of right ; but if you think the

defence is not made out, then your verdict will be for the Plaintiffs, and if for the Plaintiffs, then what damages based upon such considerations as those that I have just detailed to you. You will consider your verdict and say how you find.

Mr. EUSTACE HILLS : My Lord, may I say one thing ? I did not like to interpose while your Lordship was summing up. Mr. Bailey did say in answer to your Lordship at Question 1270, that he thought it was his duty to say something in the review about the price of the book.

Mr. Justice DARLING : Yes, he thought it was his duty to say something about the price, and we know what Mr. Bailey said. No one complains of what he did say at all, or even makes any sort of comment upon it, and no one complains that there is any libel in the whole of the review.

(The Jury retired at 11.50 and returned into court at 12.28.)

The ASSOCIATE : Gentlemen, are you all agreed ?

The FOREMAN of the JURY : We are.

The ASSOCIATE : Do you find for the Plaintiffs or for the Defendants ?

The FOREMAN of the JURY : We find for the Plaintiffs.

The ASSOCIATE : What damages ?

The FOREMAN of the JURY : £7,500.

Mr. MONTAGUE LUSH : Then, my Lord, I ask for Judgment and a certificate for a Special Jury, and the Shorthand Notes have been agreed to be costs in the cause.

Mr. Justice DARLING : Yes ; I think that was so.

Mr. EUSTACE HILLS : Would your Lordship grant a stay for such a time in order to give us an opportunity of considering our position ?

Mr. Justice DARLING : You must indicate to me in what way you are dissatisfied.

Mr. EUSTACE HILLS : Would your Lordship grant

a stay till to-morrow morning, when we might mention it ?

Mr. Justice DARLING : I am sitting in another court to-morrow—the Court of Crown Cases Reserved. What is it that you complain of ? Do you complain of misdirection, or that the verdict is against the weight of evidence, or what ?

Mr. EUSTACE HILLS : I have not had an opportunity of considering it, nor has my learned friend Mr. Bankes.

Mr. Justice DARLING : If you make an application to me you must suggest to me some ground. You can suggest more than one ground if you like.

Mr. EUSTACE HILLS : I would suggest, for one, the amount of the damages certainly.

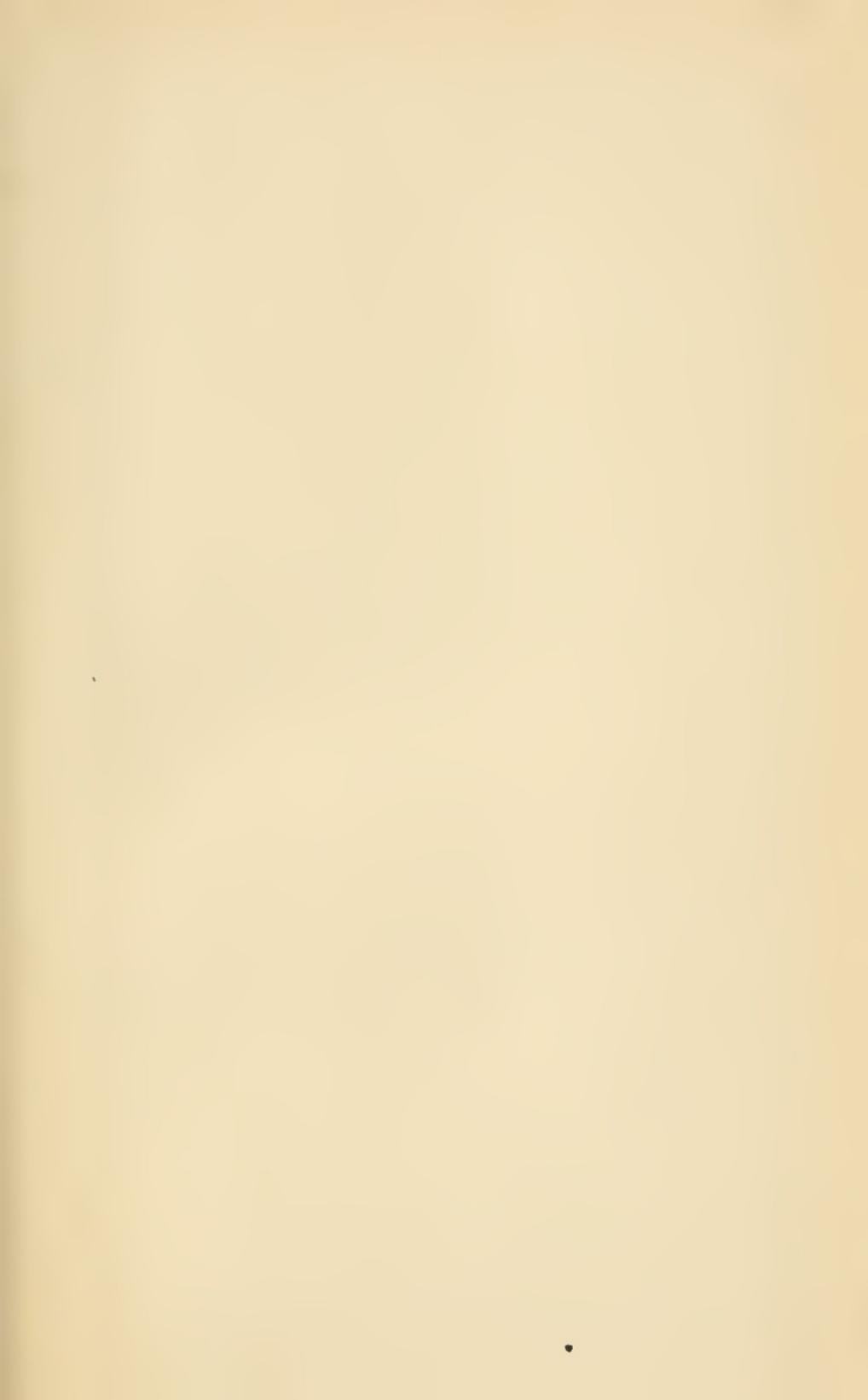
Mr. Justice DARLING : Very well, I will stay execution on that ground.

Mr. EUSTACE HILLS : If your Lordship pleases.

Mr. MONTAGUE LUSH : My Lord, there are terms usually imposed, but in the case of "The Times" I do not propose to ask that the money should be brought into court, but the costs had better be paid on the usual undertaking.

Mr. Justice DARLING : Yes, on the solicitors undertaking to return. As to the rest you do not ask anything ?

Mr. MONTAGUE LUSH : No, my Lord.







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